

2047

PROCEEDINGS  
OF THE  
ACADEMY OF POLITICAL SCIENCE  
IN THE CITY OF NEW YORK



THE ECONOMIC POSITION OF WOMEN

THE ACADEMY OF POLITICAL SCIENCE  
COLUMBIA UNIVERSITY, NEW YORK  
1910





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THE ACADEMY OF POLITICAL SCIENCE

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## INTRODUCTION

**O**F all the problems that have come in the train of the industrial revolution none are more perplexing than those that concern women. It is a wearisome commonplace that the factory has taken over much of the industrial work of the home, and that women have followed their work into the factory; but the fundamental change thus introduced into their life has not always been clearly seen. Formerly home and industry were synonymous terms for them; training for industry was training in household management. To-day industrial work is sharply separated from the management of the home, and there has come into the occupation of women a dualism that finds no parallel in the life of men. Most of the difficulties of women in industry relate themselves in some way to this fact.

An unregulated competitive system is good only for the strong. Women, by virtue of their double relation as industrial producers and as homemakers and mothers, are industrially weak. Most women are fundamentally interested in the home rather than the factory, and industrial occupation is only an interlude in their real business. Working women so-called are mostly mere girls under twenty-five who go to work with no thought of industry as a permanent career. Uninterested, untrained, unskilled, they are on a low level of efficiency, and they have little motive for climbing to a higher level. In industry a few years, then out of it into the home, they lack the discipline and solidity that come with a permanent life task. Small wonder that they crowd the unskilled labor market, and that their work commands a mere pittance.

Inefficient in their industrial work, they tend to become quite as inefficient in their function of homekeepers: for during the very years when they might otherwise be acquiring the household arts, they are busy in shop or factory, subject to a discipline requiring obedience to mechanical routine rather than that

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power of thoughtful initiative which marks the skilful homemaker. Moreover, they become accustomed to the stimulus and excitement of the crowd, so that they do not want to be alone, and home life they too often find monotonous and uninteresting. The untrained, unskilled factory hand becomes the untrained, unskilled wife and mother.

Working women are not only untrained and inefficient, but industrially ignorant and lacking in standards. Hence they put up with whatever conditions the employer imposes. They do not "make a fuss," and therefore they get treatment to which no man would submit. Moreover, such a large proportion of them are mere "pin-money girls" that there is no minimum standard of wages, such as is furnished for men by the necessary cost of maintaining a family. Women's wages are perhaps in a majority of cases simply supplementary earnings, and the wages of all women, self-dependent or not, tend to be fixed on the assumption that they will live parasitically on their relatives. As a result of this lack of standards, the whole subject of the pay and conditions of women's work is a veritable chaos. Standardization has been well worked out in many men's trades, and technical progress has followed. In women's occupations it is often easier for an unprogressive employer to throw the burden of his backwardness on docile women employees by paying low wages than it is to keep up with the march of improvement in machinery and methods. So much for the human element in this problem.

On the industrial side we find, as is more than once pointed out in these papers, that industry as now organized takes no cognizance of the special needs of the worker. Competitive cheapness must be obtained at all costs. If the worker does not insist on his rights, he gets small part of the benefits of progress. Hence changes in machinery and organization bring little advantage to women workers; such changes, in fact, are frequently carried through with distinct loss to them, however great the gain to society in general. But more than this, our present industry is made for men, and it wants only standard workers, working standard hours at standard speed. The workers must conform to this inelastic system or go without a job.

Most women are physically incapable, without permanent injury to themselves and the race, of enduring for ten hours a day the strain to which modern industry subjects them; yet they are trying to conform to its mechanical routine instead of insisting that it be changed to meet their needs. So long as this change is not made, so long will women's industrial work continue a social menace.

We face, then, a double difficulty. In the first place, woman's twofold function apparently necessitates a double preparation and a divided interest and life; in the second place, our industry demands a standardized worker for the whole of his time. In consequence of this situation, women throughout the period of factory labor have been among the greatest sufferers from low wages, long hours, and unsanitary conditions. They are the very type of worker to whom the Marxian analysis in all its rigor most nearly applies, uninterested, inefficient, ignorant, untrained, standardless. With the exception of children, they constitute the most easily exploited labor force in existing society, and they are mercilessly exploited. The new social freedom of industrial life combines with low wages to tempt and drive working girls to easier means of obtaining the pleasure they normally must have, and a grave social problem thus emerges. The changed industrial situation evidently demands a new economic and social adjustment.

A glance at the state of public opinion throws some light on the general nature of the adjustment required. Women are paid less than men primarily because they will take less, not because their work is worth less or because they need less; and public opinion acquiesces without protest. If the school pays women less than men simply because it can get them for less, how much more will the factory do the same. The public does not object because it thinks of women as dependent on their male relatives and hence not requiring a living wage. This was natural enough so long as they earned their living by household management and production, leaving to men the provision of money income. But the moment women entered the industrial field the whole situation changed. Public opinion has not yet taken cognizance of this fact. Economic conditions and social organization

are out of joint. We need to readjust our ideas and our organization to the new economic facts; but in consequence of an ignorant public opinion and a sluggish social conscience the readjustment is delayed and women are suffering sadly from overwork, underpay, injurious working conditions and neglect of training for industry and the home.

We are just beginning to feel our way toward this readjustment, which involves at least four things: 1. Giving women the training necessary for their home work. 2. Making them efficient industrial producers. 3. Making them "work conscious" and giving them industrial standards. 4. Insuring them proper pay, hours and conditions, by adjusting the demands of industry to their needs and capacity. To accomplish these ends three chief means are commonly urged, industrial training, trade unionism and legislation.

Industrial, or perhaps better vocational training, is as yet scarcely past the first stages of experimentation, and we do not clearly understand its proper aims or methods. Apparently we may rightly demand of the school that it give girls a reasonable training for their work as mothers and home-keepers, at the same time that it imparts to them a degree of technical skill in industrial work, and above all, that power of adaptation to changing conditions so imperatively demanded by modern economic life. A vague statement of this kind, indeed, means little, and discussions of industrial training are at present too full of vague generalizations. What we need is a series of careful studies of particular trades in particular places, and of the possibilities of the schools in connection therewith. It is only when we get this intimate knowledge of economic conditions and build our training on it, that the training becomes of much value in the large process of social readjustment. Otherwise we may help a few girls to get better wages, but that is about all, and even that is problematical. The combination, however, of an efficient system of trade investigation, a scientifically organized and conducted employment bureau, and an intelligent educational scheme is full of promise.

Permanent organization of women workers has hitherto proved difficult, if not impossible, by reason of the youth, inexperience,

ignorance and short trade life of the young women concerned. Women's unions have come and gone, often leaving behind them certain permanent gains. In making girls industrially self-conscious, in setting standards of work and pay, in arousing public interest and awaking public conscience, thus preparing the way for legislation, they have performed valuable service even when short-lived. Sometimes a situation like that created by the New York shirtwaist strike gives opportunity to focus public attention on the condition of women workers. Great as its immediate services may be, organization at present reaches but a small fraction of women workers, and its permanent value in the larger view perhaps lies chiefly in educating working women, employers and the public to higher standards of employment and pay.

There remains the method of legislation. While law follows in the wake of public opinion in a democracy, industrial betterment often lags considerably behind the general progress of public intelligence, and the law can push the backward employer up to the level of the more enlightened one. The great advantage of the legal method is its uniformity; it puts all employers and establishments on the same basis. Moreover, its gains are usually fairly secure. A standard once embodied in law is harder to break down than a mere trade standard attained by union pressure, for example. Hence in the case of women workers, where conditions for individual improvement are unfavorable, where union methods are difficult of application, the process of readjustment will doubtless go forward largely by legal enactment. We shall see an increasing body of law governing the conditions under which women work. As the community finds that it has no other way of protecting itself against the injury it suffers from present conditions of employment of women, it will more and more resort to the prescribing of minimum legal limits below which they may not be crowded.

Fortunately for progress in this respect, our courts have generally looked with relative favor on legislation for women. The right of the state to exercise the police power to protect the health of women for the sake of future generations is now clearly established in the court of last resort. All that is necessary for



the incorporation of a new requirement into the legal standard is to convince the courts of its relation to health—a method employed with success in the Oregon and Illinois ten-hour cases. Thus far such legislation has dealt chiefly with hours, but the principle is capable of almost indefinite extension. As we approach the question of general working conditions and the more purely economic consideration of wages, the limitations of the legal method come more clearly into view; none the less the use of that method must extend beyond the present limits.

Fortunately also the method of legal enactment can be applied in some measure to bring about those modifications in the demands of industry that are necessary for women. Abandoning the fatuous attempt to keep women out of industrial life, we shall set about the task of humanizing industry by ridding it of the conditions that make wholesome life difficult for workers to attain. Realizing the greater needs of women, we may first set legal standards for them alone; and then, just as was the case in the early fight for a shorter workday, the advantage legally conceded to women may be extended to men as well. Slowly public opinion advances toward more enlightened views, and social and legal organization gradually improve with it. Following the economic upheaval that we call the economic revolution, a tremendously complex and difficult readjustment has been necessary, one made more difficult by the fact that it must be worked out in a democratic society. In the peculiarly difficult and trying situation of women during this readjustment we find abundant justification for social action to protect them against the dangers to which they are exposed, and abundant demand for the most thoroughgoing investigation on which to base such action. The present collection of papers is an attempt to state some of the manifold aspects of the problem and to discuss some of the proposed means of solution.

H. R. M.

## THE HISTORICAL DEVELOPMENT OF WOMEN'S WORK IN THE UNITED STATES

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THE history of women's work in the United States is the story of an economic and industrial readjustment which is by no means yet complete. Women have worked since the world began, and at the dawn of history their labor was probably as important in family or tribal economy as it is today in the industrial world. Since early colonial days in this country, moreover, women have worked for gain, sometimes selling to the local storekeeper the products of leisure hours spent in spinning, weaving, knitting or sewing, sometimes themselves keeping little shops, and sometimes hiring themselves out to work in the families of their neighbors. But during the nineteenth century a great transformation occurred which has materially changed woman's economic position.

Woman's work may be divided into five general categories: unpaid labor, independent gainful labor, domestic service, wage labor in manufacturing industries and wage labor in trade and transportation. In all these varieties of work great changes have taken place. In the first place technical improvements have removed from the home to the factory and workshop a large part of the labor formerly carried on almost exclusively by women. Women naturally followed their occupations, and in doing so changed their economic status from that of unpaid laborers to that of paid laborers. Though the number gainfully employed has materially increased, however, the amount of unremunerated home work performed by women must still be considerably larger than the amount of gainful labor, for in 1900 only about one fifth of all females 16 years of age and over were breadwinners.<sup>1</sup>

<sup>1</sup> In 1870, the earliest year for which statistics are available, 14.7%, and in 1900 20.6% of the female population 16 years of age and over were bread-winners.



Not only have unpaid, home-working women been transformed into paid factory operatives, but both independent home workers and wage-earning home workers have been transferred to factories and workshops. This change is especially evident in the comparatively backward clothing industries, which the sewing machine and artificial power have gradually driven from the home to the shop and, in some branches, to the factory. In the early days of wholesale clothing manufacture in this country all the work, except the cutting, was done for piece wages in the homes of the workers. Gradually, however, the industry has been drawn into sweatshops and factories. Independent domestic production, meanwhile, except in certain lines like dress-making and to a slight extent the preserving of fruit and making of jelly, has practically become a thing of the past. The movement away from home work can hardly be regretted, however, in view of the fact that the entire history of women's work shows that their wage labor under the domestic system has almost invariably been under worse conditions of hours, wages and general sanitation than their wage labor under the factory system.

There has probably been, moreover, a material increase in the proportion of women wage earners as compared with independent producers. Before the introduction of machinery wage labor generally meant domestic service. There were, of course, exceptions. Early instances are well known of women spinners gathered together in groups and paid fixed sums, and women were early employed to sort and cut rags in paper mills. But the range of wage-earning occupations open to them has enormously increased, while it is doubtful whether any larger proportion are now engaged in independent industry than were so engaged two centuries ago. In commercial and professional pursuits, it is true, the opportunities for independent business have very greatly increased, but in manufacturing industries, as a result of the unprecedented growth of wholesale production, they have materially narrowed for women as well as for men.

The wage-earning opportunities of women in the three great groups of occupations, domestic service, manufacturing industries, and trade and transportation, have also changed decidedly. Thousands, of course, have always been employed in domestic

service, which has acted as the complement of the industrial pursuits. The opportunity to "hire out" has continually confronted the working woman and frequently, when she complained that her conditions of work were hard and her pay inadequate, she has been admonished by philanthropists and even by economists to betake herself to the kitchen, whose homelike conditions, high wages and pressing need of her labor have always been loudly proclaimed. The conditions and problems of domestic service, indeed, have changed far less than those of any other occupation. Nevertheless, the proportion of all gainfully employed women engaged in domestic and personal service has steadily decreased.<sup>1</sup>

In the manufacturing industries, on the other hand, great changes have taken place. The entrance of women into these industries may be attributed to three principal causes, machinery, artificial power and division of labor. All of these are in part the cause and in part the effect of an unprecedented development of wholesale, as opposed to retail production, and this growth of wholesale trade is itself primarily the result of improved means of communication and transportation.

These three factors have also caused a considerable amount of shifting of occupations. Under the domestic system of labor woman's work and man's work were clearly defined, women doing the spinning, part of the weaving, the knitting, the sewing and generally the cooking. But with the introduction of machinery for spinning and weaving thousands of hand workers were thrown out of employment. It is not surprising to learn that the first spinners and weavers by machinery were women. Later, however, mule spindles, operated by men, were introduced for part of the work. In certain other cases, too, machinery has caused the substitution of men for women in industries formerly considered as belonging to woman's sphere. Women's suits, for instance, are now largely made by men tailors, and men dressmakers and milliners are not uncommon. Men bake our bread and brew our ale and wash our clothes in

<sup>1</sup> In 1870, 58.1% and in 1900 only 39.4% of all females 10 years of age and over engaged in gainful occupations were in the division "domestic and personal service."

the steam laundry. At present men even clean our houses by the vacuum process.

One result has been that thousands of women who, under the old régime, would have sat calmly like Priscilla by the window spinning, have been forced to seek other occupations. When the industrial revolution transformed the textile industries they naturally turned to the only other employment for which they were trained, sewing. This, however, only increased the pressure of competition in the sewing trades, already sufficiently supplied with laborers. In the middle of the century, moreover, before any effective readjustment had taken place, the sewing machine was introduced, greatly increasing productivity and at the same time further sharpening competition.

Thus the increased productivity due to machinery and the simultaneous loss, by reason of the greater adaptability of men to certain machines, of woman's practical monopoly of the textile trades has caused intense competition and has forced many women into other industries, not traditionally theirs. From the beginning, however, their choice of occupations has been hampered by custom. As early as 1829 a writer in the *Boston Courier*<sup>1</sup> said:

Custom and long habit have closed the doors of very many employments against the industry and perseverance of woman. She has been taught to deem so many occupations masculine, and made only for men, that, excluded by a mistaken deference to the world's opinion, from innumerable labors, most happily adapted to her physical constitution, the competition for the few places left open to her, has occasioned a reduction in the estimated value of her labor, until it has fallen below the minimum, and is no longer adequate to present comfortable subsistence, much less to the necessary provision against age and infirmity, or the every day contingencies of mortality.

Economic necessity, however, with division of labor as its chief tool, sometimes aided by power machinery and sometimes alone, has gradually opened up new industries to women. As early as 1832 they were employed in as many as one hundred different occupations. In many of these, to be sure, they were

<sup>1</sup> *Boston Courier*, July 13, 1829.

as rare as women blacksmiths are today. But in 1836 a committee of the National Trades' Union, appointed to inquire into the evils of "female labor," reported that in the New England States "printing, saddling, brush making, tailoring, whip making and many other trades are in a certain measure governed by females," and added that of the fifty-eight societies composing the Trades' Union of Philadelphia, twenty four were "seriously affected by female labor."<sup>1</sup> The census of 1850 enumerated nearly one hundred and seventy-five different manufacturing industries in which women were employed, and the number has steadily increased until there is now scarcely an industry in which they are not to be found.

Usually, however, they have been employed, in the first instance, only in the least skilled and most poorly paid occupations, and have not competed directly with men. This has been due in part to custom and prejudice, perhaps, but primarily it has been due to lack of training and ambition, and to general irresponsibility. One of the causes, to be sure, of the lack of training and ambition is the knowledge that well-paid positions are seldom given to women. A much more vital cause, however, is to be found in the lack of connection between the work and the girl's natural ambitions. Before the industrial revolution women were probably as skilful and efficient in their lines of industry as men in theirs. The occupations taught girls at that time were their for life and naturally they took great pride and pleasure in becoming proficient in work which prepared them for marriage and for the career which nearly every young girl, with wholesome instincts, looks forward to as her ideal, the keeping of the home and the care of children. But when the connection was lost between work and marriage, when girls were forced by machinery and division of labor to undertake tasks which had no vital interest to them, there grew up a hybrid class of women workers in whose lives there is contradiction and internal if not external discord. Their work no longer fits in with their ideals and has lost its charm.

<sup>1</sup> From the proceedings of the National Trades' Union, published in the *National Laborer*, Nov. 12, 1836, and reprinted in the *Documentary History of American Industrial Society*, vol. vi, pp. 285-6.

Even in industries which, like the textile and sewing trades, belong to women by long inheritance, machinery and division of labor have so transformed processes that both the individuality of their work and the original incentive to industry have been wholly lost in a standardized product. Moreover, in their traditional sphere of employment and especially in the sewing trade, competition has been so keen that the conditions under which they have worked have been, upon the whole, more degrading and more hopeless than in any other class of occupations. From the very beginning of the wholesale clothing manufacture in this country, indeed, five elements, home work, the sweating system, the contract and sub-contract systems increasing the number of middlemen between producer and consumer, the exaggerated overstrain due to piece payment, and the fact that the clothing trades have served as the general dumping ground of the unskilled, inefficient and casual women workers, have produced a condition of almost pure industrial anarchy.

It is interesting to note, in this connection, that the greatest economic success of women wage earners in manufacturing industries has been attained in occupations in which they have competed directly with men. Women printers and cigarmakers, who in many cases have been introduced as the result of strikes, have generally earned higher wages than their sisters who have made shirts and artificial flowers. Usually, however, when, as in certain classes of cigar making, they have entirely displaced men, they have soon lost their economic advantage. And it is exceedingly doubtful whether, in such cases, women have gained as much as men have lost. Certainly they have not regained what they themselves have lost through being displaced by men in their customary sphere of employment.

The occupations grouped under the title "trade and transportation," most of which are new and offer, therefore, no problems of displacement, have furnished working women, in general, their most remunerative employments. This, too, is the group of industries in which, within recent years, the most rapid increase in the number and proportion of women workers has



taken place.<sup>1</sup> Though the number of saleswomen, stenographers, clerks, bookkeepers, telegraph and telephone operators, and so forth, is still small as compared with the number of women textile factory operatives, seamstresses, boot and shoemakers, paper box makers, and so on, it is rapidly increasing. In this movement, moreover, there is evident more than anywhere else a certain hopeful tendency for working women to push up from the level of purely mechanical pursuits to the level of semi-intellectual labor. The trade and transportation industries are, roughly speaking, middle-class employments, as contrasted with the manufacturing industries, which are, roughly speaking, working-class employments.

Women's wages have always been excessively low and their hours excessively long. About 1830 Mathew Carey estimated that in Philadelphia, New York, Boston and Baltimore there were between 18,000 and 20,000 working women, at least 12,000 of whom could not earn, by constant employment for 16 hours out of the 24, more than \$1.25 per week. At this rate he figured that, allowing for the loss of one day a week through sickness, unemployment or the care of children, and counting lodging at 50 cents and fuel at 12½ cents a week, a woman would have left for food and clothing just \$22.50 per year. A good seamstress without children and employed all the time he figured could earn \$1.12½ per week or \$58.50 per year, out of which she would have to pay 50 cents per week for rent, 15 cents per week for fuel, 8 cents per week for soap, candles, etc., and \$10 for shoes and clothing—which would leave her for food and drink 2¾ cents per day. If she was hampered by the care of children, was unemployed one day a week, or was slow or unskilled, he figured that, at the same rates of expenditure, she would have a yearly deficit of \$11.56.<sup>2</sup> The situation of the

<sup>1</sup> In 1870 nearly 20% of all females 10 years of age and over engaged in gainful occupations were in manufacturing and mechanical pursuits and only 1% in trade and transportation, but in 1900, while the proportion of women in manufacturing and mechanical pursuits had increased to 24.7%, the proportion in trade and transportation had increased to 9.4%.

<sup>2</sup> Carey, *Miscellaneous Pamphlets*, Phila., 1831, "To the Ladies who have undertaken to establish a House of Industry in New York," and "To the Editor of the New York *Daily Sentinel*," *Select Excerpta* (A collection of newspaper clippings

working women in the cities of this country during the early decades of the nineteenth century was, indeed, as characterized by the New York *Daily Sentinel*, the first daily labor paper in this country, "frightful, nay disgraceful to our country, . . . a gangrenous spot on the body politic, a national wound that ought to be visited and dressed, lest it rankle and irritate the whole system."<sup>1</sup>

Fifteen years later conditions were little better. An investigation of "female labor" in New York in 1845 led to the assertion by the *New York Tribune* that there were in that city about 50,000 working women, onehalf of whom earned wages averaging less than \$2 per week, and to the further statement that the girls who flocked to that city from every part of the country to work as shoe binders, type rubbers, artificial-flower makers, match-box makers, straw braiders, etc., found competition so keen that they were obliged "to snatch at the privilege of working on any terms." "They find," said the *Tribune*, "that by working from fifteen to eighteen hours a day they cannot possibly earn more than from one to three dollars a week, and this, deducting the time they are out of employment every year, will barely serve to furnish them the scantiest and poorest food, which, from its monotony and its unhealthy quality, induces disgust, loathing and disease. They have thus absolutely nothing left for clothes, recreation, sickness, books or intellectual improvement."<sup>2</sup>

In 1863 the average wages paid to women in New York, taking all the trades together, were said to have been about \$2 a week, and the hours ranged from eleven to sixteen a day.<sup>3</sup> And in 1887 it was stated that in New York City nine thousand and in Chicago over five thousand women earned less than \$3 per week.<sup>4</sup>

Some of these statements may be exaggerations, but there

made by Matthew Carey, now in the Ridgway Branch of the Library Company, Philadelphia), vol. 13, pp. 138-142; *Appeal to the Wealthy of the Land*, 3d ed., p. 15.

<sup>1</sup> Quoted in Carey, *Miscellaneous Pamphlets*, No. 12, Philadelphia, 1831.

<sup>2</sup> *New York Daily Tribune*, July 9, August 19, 1845.

<sup>3</sup> *Fincher's Trades' Review*, Nov. 21, 1863.

<sup>4</sup> *Industrial Leader*, July 9, 1887.

can be no doubt that, throughout the entire history of women in industry in this country, their wages, in thousands of cases, have been inadequate for decent support. Their wages, too, have been far below those of men. In 1833<sup>1</sup> and again in 1868<sup>2</sup> it was stated that women's wages were, on an average, only about one fourth what men received. Moreover, it has been authoritatively stated that during the civil war period the wages of women increased less than those of men, while their cost of living rose out of all proportion.<sup>3</sup>

It is probable that, in general, women's wages have been less flexible, more subject to the influence of custom and less to the influence of demand and supply, than men's. Unfortunately custom in this case has furnished a standard of exploitation and not of protection. It is probable, too, that working women have suffered more than working men from periods of panic and depression, for such periods, like war, have thrown upon their own resources thousands of women who in normal times are supported by their male relatives.

In the textile industries wages, during the first half of the nineteenth century at least, were higher than in the clothing trades. The Lowell girls during the so-called "golden era" earned from \$1.50 to \$2 per week in addition to their board of \$1.25. Their day's work, however, varied from 11 hours and 24 minutes in December and January to 13 hours and 31 minutes in April, and averaged 12 hours and 13 minutes, or 73½ hours per week.<sup>4</sup> It must be remembered, moreover, that there were in this country, during these early years, two distinct systems of factory labor, the factory boarding-house system of Lowell, Dover, N. H., and other places in that neighborhood, and the family system which prevailed in Fall River, throughout Rhode Island, and generally in New York, New Jersey and Maryland. In the factories operated on the family system of labor wages were distinctly lower than in those of the Lowell

<sup>1</sup> *Workingman's Shield*, Cincinnati, Jan. 12, 1833.

<sup>2</sup> *Workingman's Advocate*, Chicago, June 6, 1868.

<sup>3</sup> Mitchell, *History of the Greenbacks*, p. 307.

<sup>4</sup> Montgomery, *Practical Detail of the Cotton Manufacture of the United States*, 1840, pp. 173-174.



type, and were frequently paid in store orders. In these factories, too, hours were longer, being in summer  $13\frac{3}{4}$  per day and averaging throughout the year  $75\frac{1}{2}$  per week.<sup>1</sup> Girls, moreover, went to work at an earlier age. Child laborers whom the Lowell manufacturers could not afford to keep in their factory boarding houses were employed in large numbers.

The general conditions under which women have toiled in this country have been little if any better than their wages and their hours. During the years when Lowell is supposed to have been a busy paradise, with flowers blooming in the factory windows, poetry and hymns pasted on the walls, and the *Lowell Offering* furnishing an outlet for the exuberant literary activities of the operatives, the ventilation, both of factories and of boarding houses, was absolutely inadequate. In the boarding houses from four to six and sometimes even eight girls slept in one room about 14 by 16 ft., and from twelve to sixteen girls in a hot, ill-ventilated attic. In winter the factories were lighted by lamps. One woman who testified before the Massachusetts Committee on Hours of Labor in 1845 stated that, in the room where she worked, along with about 130 other women, 11 men and 12 children, there were 293 small lamps and 61 large lamps which were sometimes lighted in the morning as well as in the evening.<sup>2</sup> The lack of ventilation in the mills and boarding houses of Lowell was in 1849 made the subject of a report to the American Medical Association by Dr. Josiah Curtis, and in the same year the physician of the Lowell Hospital, established by the manufacturing corporations exclusively for the use of operatives, attributed to lack of ventilation in the cotton mills the fact that, since the founding of the hospital nine years before, over half the patients had suffered from typhoid fever.

Typhoid fever, however, was doubtless a far less general result of these conditions than consumption. Even the *Lowell Offering*, which found no evils in factory labor except long hours and excused these on the ground that long hours were universal throughout New England, bears evidence in practically every

<sup>1</sup> Montgomery, *op. cit.*

<sup>2</sup> *Massachusetts House Document*, no. 50, 1845, p. 3.

number that tuberculosis of the lungs was the great scourge of the factories. The labor papers, moreover, as early as 1836, began to point out the direct connection between factory labor and consumption. In 1845, too the *United States Journal* published a poem by Andrew McDonald, the first verse of which reads: <sup>1</sup>

Go look at Lowell's pomp and gold  
 Wrung from the orphan and the old;  
 See pale consumption's death-glazed eye—  
 The hectic cheek, and know not why.  
 Yes, these combine to make thy wealth  
 "Lord of the Loom," and glittering pelf.

There is no reason to believe that conditions were any better, if as good, in other manufacturing districts. In the clothing industry, moreover, which has long been concentrated in cities, overcrowding and unsanitary housing conditions in horrible variety have furnished the environment of working women. Whole blocks of tenements, too, have been rented out to families in New York for the manufacture of cigars. As early as 1877 the United Cigar Manufacturers' Association, an organization of small employers, condemned as unsanitary these tenement cigar factories where the babies rolled on the floor in waste tobacco, and the housework, the cooking, the cleaning of children and the trade of cigar making were all carried on in one room.<sup>2</sup>

From these evil conditions, low wages, long hours and unwholesome sanitary arrangements, immigrant women have naturally been the greatest sufferers, for, like their husbands and brothers, they have been obliged to begin at the bottom. Irish women first entered the factories of New England, for example, as waste pickers and scrub women. But their daughters became spinners and weavers. There have been, however, certain exceptions to this rule. The skilled Bohemian women cigar makers who came to New York in the seventies, for instance, earned from the first comparatively high wages. Foreign girls

<sup>1</sup> Quoted in the *Voice of Industry*, a labor paper published in Lowell, Nov. 28, 1845.

<sup>2</sup> *New York Sun*, Dec. 3, 1877.

who have gone into domestic service, moreover, have frequently earned higher wages than American girls who have chosen to be, for example, saleswomen.

The chief forces which have tended to improve the condition of working women have been trade unions, industrial education and legislation. In certain industries, especially shoe making, cigar making, printing and collar and cuff making, trade unions have brought about higher wages, shorter hours or better conditions in certain localities. Women shoe-binders, about one thousand in number, won a strike for higher wages at Lynn as early as 1834,<sup>1</sup> and during the sixties and seventies the Daughters of St. Crispin protected the working women of their craft. Women members were admitted into the Cigar Makers' International Union in 1867 and were prominent in the great strike of 1877. The International Typographical Union admitted women in 1869. Probably no organization of women workers, however, has been more effective than the Collar Laundry Union of Troy, N. Y., the predecessor of the Shirt, Waist and Laundry Workers' International Union. During the sixties the Collar Laundry Union is said to have raised the wages of its members from \$2 or \$3 to \$14 a week, and to have contributed \$1000 in aid of Troy iron molders on strike against a reduction of wages, and \$500 in aid of striking bricklayers in New York.<sup>2</sup>

The tailoresses of New York, moreover, were organized as early as 1825, and in 1831 sixteen hundred tailoresses and seamstresses of that city went on strike for an elaborate wage scale covering a large variety of work, and remained out for four or five weeks.<sup>3</sup> Considering that the population of New York in 1830 was under 200,000, this strike bears comparison with the great shirt-waist workers' strike of 1909-1910. Two years later the journeyman tailors of Baltimore were assisting the tailoresses of that city in a "stand-out" for higher wages,<sup>4</sup>

<sup>1</sup> *Lynn Record*, Jan. 1, 8, March 12, 1834.

<sup>2</sup> *The American Workman*, Boston, Aug. 7, 1869; *Workingman's Advocate*, Chicago, April 28, 1866; *The Revolution*, N. Y., Oct. 8, 1868.

<sup>3</sup> *Carey's Select Excerpts*, Vol. 4, pp. 11-12.

<sup>4</sup> *Baltimore Republican*, Oct. 2, 1833.

and in the summer of 1844 the Boston tailors aided a large and apparently successful strike of sewing women.<sup>1</sup> In 1851 an effort to assist some six thousand shirt sewers in New York led to the foundation of a shirt sewers' coöperative union, which prospered for several years.<sup>2</sup> Many other organizations of sewing women have been formed and have conducted strikes, which have sometimes succeeded and sometimes failed.

In the textile industries, too, a long series of efforts by operatives to improve their own situation began with the picturesque strike of four hundred women and girls in Dover, N. H., in 1828, when the operatives paraded the town with flags and inscriptions and the factory agent advertised for two or three hundred "better-behaved women."<sup>3</sup> The long and bitterly contested but successful strike of the Fall River weavers against a reduction of wages in 1875 was led by women who went out after the Weavers' Union, composed of men, had voted to accept the reduction.<sup>4</sup>

Many other examples of effective trade-union activity among women workers might be cited. These women's organizations, moreover, have proved powerful factors in the fight for ten-hour laws.

The industrial schools and business colleges which began to spring up in the sixties and seventies have also furnished important aid to working women. Apprenticeship for girls has always been a farce. Even in colonial days girl apprentices were rarely taught a trade of any kind, and early in the nineteenth century apprenticeship for girls, as well as for boys, came to be generally a means of securing cheap child labor. After the industrial revolution, indeed, the condition of working women, as regards skill and efficiency, was probably distinctly lower than before they became wage earners. Industrial schools, however, have been very slow of development. Business colleges, on the other hand, began during the eighties to receive

<sup>1</sup> *Peoples' Paper*, Cincinnati, Sept. 22, Oct. 6, 1844.

<sup>2</sup> *New York Daily Tribune*, July 31, Sept. 11, 1851; June 8, 1853.

<sup>3</sup> *Mechanics' Free Press*, Phila., Jan. 17, 1829; *New York American*, Jan. 5, 1829; *National Gazette*, Phila., Jan. 7, 1829.

<sup>4</sup> Baxter, C. H., *History of the Fall River Strike*, 1875.

large numbers of women students, and have materially aided in opening up in the trade and transportation industries remunerative occupations for women.

Some progress, moreover, has been made through legislation. Laws compelling seats for women employees have helped wherever they have been enforced. Sanitary legislation, too, has effected certain improvements, though it is doubtful whether, on the whole, such legislation has as yet more than balanced the ill results of the greater concentration of population and the greater strain of work.

In a number of states legislation has also brought an answer to the prayer of the "unknown factory girl" of 1846,

God grant, that, in the mills, a day  
May be but "Ten Hours" long.<sup>1</sup>

But at the same time the speed and intensity of work have been greatly increased. Until about 1836, for example, a girl weaver tended, as a rule, only two looms, and if she wished to be absent for half a day, it was customary for her to ask two of her friends to tend an extra loom apiece so she should not lose her wages. By 1876 one girl tended six and sometimes eight looms. Meanwhile, too, the speed had been increased. In 1873 it was estimated that a girl spinner tended from two to three times as many spindles as she did in 1849.<sup>2</sup> This tendency to multiply the amount of work to be performed in a given time has continued active. Piece wages have meanwhile fallen so that the total earnings of the operatives have not been increased, but, taking into consideration the cost of living, have rather been decreased.

In the sewing trades, too, the intensity of work has been very greatly increased by the use of the sewing machine, particularly when power-driven, by the resulting minute subdivision of labor, and by the sweating system. A certain amount of division of labor was practised, it is true, long before the invention of the sewing machine. Vest making, for example, was a separate

<sup>1</sup> *Voice of Industry*, Feb. 20, 1846.

<sup>2</sup> Gray, *Argument on Petition for Ten-Hour Law*, 1873, pp. 21-22.



and distinct business. But it was not until after the introduction of the machine that much progress was made in dividing the work upon a single garment. The sub-contract or sweating system, too, appears to have originated at least as early as 1844,<sup>1</sup> but probably did not assume an important place until introduced about 1863 by contractors for army clothing. At first, moreover, the work for the sub-contractors was nearly all done in the homes. The need, however, for capital to invest in machines and later in power to run the machines, naturally tended to gather the workers into sweat shops, into small establishments, and then into factories where every possible incentive was offered to the most intense concentration of energies and to excessive speed. As in the textile factories, too, piece-rate wages have fallen automatically with productivity so that, whatever the exertion required and the number of garments turned out, remuneration has remained near the subsistence level.

The history of women in industry is, in short, the story of the transfer of women workers from the home to the factory, from labor in harmony with their deepest ambitions to monotonous, nerve-racking work, divided and subdivided until the woman, like the traditional tailor who is called the ninth part of a man, is merely a fraction, and sometimes an almost infinitesimal fragment, of an artisan. It is a story of long hours, overwork, unwholesome conditions of life and labor and miserably low wages. It is a story of the underbidding of men bread winners by women, who have been driven by dire necessity, by a lower standard of living, or by the sense of ultimate dependence upon some man, even if he be only a hypothetical husband, to offer their services upon the bargain counter of the labor market. It is a story of the futile efforts of misdirected charity, whether that of fathers and brothers, of factory boarding houses or of philanthropic organizations, to aid the oppressed working women by offering them partial support, thereby enabling them to accept wages below the subsistence level, and still hold together

<sup>1</sup> In that year it was said that a man and two women working together from twelve to sixteen hours a day earned a dollar among them, and that the women, if they did not belong to the family, received each about \$1.25 a week for their work. *Workingman's Advocate*, July 27, 1844.

soul and body. It is, finally, a story of wasted human lives, some of them wasted in the desperate effort to snatch from the world a little share of joy, and some of them wasted through disease and death or through the loss of the powers of body and mind required for efficient motherhood.

That such has been the history of women in industry is due in part to their lack of training, skill and vital interest in their work. In part it is due to excessive competition in their traditional occupations, combined with a variety of impediments, some of them rooted in established customs and ideals and some of them perhaps inherent in woman herself, to their free movement into new occupations, into the higher paid positions and into less congested communities. In part, however, it is due to the lack of appreciation of the need for legislative action.

The four great curses of working women have always been, as they are today, insufficient wages, intense and often unfair competition, overstrain due to long hours, heavy work or unhygienic conditions, and the lack of diversified skill, or of any opportunity or incentive to acquire and display ability and wisely-directed energy. The story of woman's wage labor is, therefore, pitifully sad and in many respects discouraging. But it is the story of an industrial readjustment which is not yet near completion, and there is good reason to believe that the turning point has been reached and that better things are in store for the working woman. When we realize, however, what the economic position of women has been in the past and through how many generations large numbers of them have toiled under conditions which involved not only terrible suffering to themselves, but shocking waste to the community, it becomes evident that the present problem will not solve itself, but demands of our generation the best thought, the best energy, and the most thorough legislative regulation designed to conserve the human resources bound up in the mothers of the nation.

## CHANGES IN WOMEN'S WORK IN BINDERIES<sup>1</sup>

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"**B**OOKBINDING is a very uncertain trade," said a forewoman who had held her position fourteen years; "I wouldn't advise any young girl to go into it. There is so much machinery now. Where a girl used to make eight or nine dollars, she now makes five or six, and that's not a living. Also you never know when you'll be laid off. Take the magazine binderies. They don't keep the girls a full month. Ten days is their month. Twelve days is a long month. It's a bad arrangement to do thirty days' work in twelve. You have to pay board every week."

Remarks like these were made by many girls employed in the bookbinding trade in New York. For the most part they did not see reasons or remedies for the conditions which they faced, but by daily experience they had learned this fact of change as it appeared in numerous guises, irregular employment, irregular hours, hit-or-miss methods of learning, cuts in wages, and the displacement of workers by the coming of machines. If their impressions be correct, more important than any photographic description of their economic position, regarded as a static thing, is an account of changes in conditions and their effect on women workers.

If we attempt to verify the statements of the workers by the official figures in the census, showing the proportion of men and women employed in binderies at successive enumerations,<sup>2</sup> we shall be surprised and somewhat bewildered. In 1870 30%

<sup>1</sup>This article is based on a chapter of a report not yet published on women's work in binderies in New York. It is the result of an investigation carried on for the Alliance Employment Bureau of New York from the autumn of 1907 until the spring of 1909. Every bindery in the borough of Manhattan was visited, and 205 women employed in the trade were interviewed at their homes or in the office of the bureau.

<sup>2</sup>U. S. Census, 1900. *Occupations*, pp. LII, CXXXVI.



were women, 70 % were men; in 1880 39.7 % were women, 60.3 % were men; in 1890 48.5 % were women, 51.5 % were men; in 1900 51.6 % were women, 48.4 % were men.

This rapid shifting of the relative proportion of men and women would lead the statistician to suppose that in this trade was to be found a perfect example of the displacement of men by women. Behind the figures one seems to read the story of a struggle in which men have been the losers. Yet the comments of workers and employers, and the conditions actually witnessed in binderies in New York contradict this reading of census figures. Evidently more facts are needed in order to understand what is happening in the trade.

The bindery trade in New York employs about five thousand women, a third of all the women at work in binderies in the United States. A few are at work in hand binderies, where craftsmen of two or three centuries ago would find tools and methods not entirely unfamiliar. Others work in "edition binderies," where machines bind books by the thousands. Others work in pamphlet binderies, or magazine binderies. The methods and conditions differ in these different branches of the trade.

Whether a book is bound by hand or machine, whether it is covered with levant or paper, whether it is sewed with linen thread or stitched with wire, certain processes are necessary. The sheets must be folded into portable size, the folded sections must be held together in proper order, and the whole must be covered. It is in the matter of the covering that the branches of the trade differ most widely. The making of the hand-bound book, designed to last longest, demands the most numerous processes. At the other extreme is the paper-covered pamphlet.

The machine method of binding books omits many processes of hand binding, and combines others into one simple operation. In hand binding, one book is the center of attention until it is finished, and each volume requires slightly different treatment. In machine binding, the method is to repeat one process thousands of times, adopting the factory system with its division of processes and its labor-saving machines. A pam-

phlet should be folded and its sections placed in proper order as accurately as a book bound in cloth or morocco, but as it is to be covered only with heavy paper, it requires no such careful pressing, trimming, and retrimming, rounding and backing, glueing, lining-up, drawing-in, and all the other diverse manipulations by which the artistic binder assures the preservation of the sheets in a solid and substantial cover made by hand. A periodical is a species of pamphlet, but it is distinguished by uniformity of size week after week or month after month. Thus it lends itself admirably to machine production.

Women are standing on the threshold of the bindery trade. All the work of preparing the sheets is theirs, folding, placing them in sequence, and attaching them together with paste, thread or wire. In pamphlet binding they put on the covers, but in edition binderies, they have no share at all in the important work of the forwarding department, and they enter the finishing department only in order to lay the gold on the covers and to examine and wrap the completed volumes. Will the process of change give them greater or less opportunities?

The machine is the great fact which looms large before the eyes of bindery women, when they describe changes in their trade. They accept it as they would accept a rainy day but it usually spells "out of work" for someone in the bindery, and the calamity of unemployment is more immediate and real to the workers than are the advantages of better methods of production.

The different methods of folding sheets illustrate the development of machinery. Often these different methods are found together in one workroom. For example, in an edition bindery in New York the sheets are fed into one of the six point folding machines or placed in the automatic folder or, very rarely, folded by hand. In the first case, girls sitting on high stools feed each separate sheet into the machine, placing the printed dots on needle-like points, which serve as guides, while their helpers, the learners, take out the folded sections and "jog" them straight on tables. If the pages are to be folded by the automatic machine, they are placed in the proper position under two rubber knuckles, which push them

toward the folding rollers. The forewoman, in addition to her other work, keeps watch to see that the folding is properly done, but no hand work is required except to pile the sheets under the rubber fingers and to lift the folded sections from the boxes into which the machine delivers them. Between the "point" machine and the "automatic" was another invention not found in this bindery. In it the points gave place to automatic gauges, and the girl who fed it need only flick the sheet from the pile so that the machine could grip it. By dispensing with the points on which each sheet must be fitted much time was saved. Obviously the next step was to supply an automatic feeder.

The stories of displaced workers illustrate what happens when new machines are introduced. One girl had been employed in bindery work three years. As a learner, she had "knocked up" sections folded by the "point" machine. She was paid three dollars a week, and continued the same process one year. Then when a vacancy occurred, she was given a chance to operate the machine. It was not easy to learn, nor could it be done in a day or a week. At first she received a weekly wage of four dollars and fifty cents, but "advanced rapidly" until she was earning nine dollars.

One day an automatic machine appeared in the workroom and proved so successful that it was used in preference to the point folders. This girl was given hand folding, which is "terrible work." It is hard to earn a living wage by hand folding. The worker is paid a cent or a cent and a half for folding one hundred sheets if one fold is necessary. If the sheets are large and heavy like those in a dictionary the work of folding is very exhausting, although the pay may be higher. If one is paid four cents for one hundred sheets, she must fold nearly three thousand sheets in a day or seventeen thousand five hundred in a week to earn seven dollars. Moreover, each sheet must be folded three times, and each fold creased smooth by drawing the bone folding knife across the heavy paper. This girl was paid four cents a hundred for folding the pages of an encyclopedia, but she could not earn more than seven dollars a week, in spite of her efforts to work rapidly. She left because

she was not needed for hand folding and the forewoman thought that there would be no more work for "point feeders." She advised her to learn some other process.

An employment bureau sent her to a bindery where a point feeder was needed, but the machine was not the same make as the one which she had been operating, and therefore she was not employed. After a fruitless search for work in her trade, she was employed by a manufacturer of neckwear as a learner without wages. Later, as an experienced operator, she earned seven to nine dollars a week.

Another girl had operated a point folding machine in a large edition bindery. Newer inventions were introduced, and gradually more and more work was transferred to them. This girl was a piece worker, and her wages were depressed steadily as the machine which she was operating fell into disuse. She had learned only two other processes, hand folding and filling the boxes of the gathering machine. There was no gathering machine in this bindery, and the prices for hand folding were not high enough to yield a living wage. This girl and her sister, also a bookbinder, lived alone, and were dependent on their own earnings. She had decided to look for work in another bindery, when the forewoman offered to teach her to gather by hand. Gathering is not easy work. "At first," she said, "I was so tired at night I could hardly keep my eyes open at supper. I said yesterday I wished I had one of those things you put on your feet to measure the distance you walk; I'd like to know how many miles I walk in a day. There's no boys to carry our work. The folding machines are at the other end of the bindery, and we carry the work the distance from one street to another. That's a block. If there are forty sections in a book, we walk it forty times for that one book." Nevertheless her experience in handling sheets made it possible for her to learn the new process easily, so that by the end of six months she was earning approximately ten to eleven dollars a week piece work, whereas the point folding machine had yielded her a maximum of nine or ten dollars.

An expert wirestitcher in a magazine bindery sometimes earned twenty-four dollars in the busiest week of the month

when she worked overtime. When a combined gathering and wirestitching machine was introduced for binding small magazines, she was transferred to work on a weekly periodical whose pages were too large to fit the new machine. Her work was inserting during part of the week and mailing during the rest of the time. She earned ten to eleven dollars piece work, and had steadier employment than if she had continued to stitch the monthly magazine.

A gatherer, who had had long experience, "made a fuss" when the gathering machine was introduced, and was given an opportunity to operate it at a wage of eighteen dollars, the regular rate paid to men for this work. Young girls were employed to fill the boxes. The other gatherers were obliged to learn other processes in this establishment or seek work elsewhere.

The important fact common to these stories is that there was no systematic effort to prevent the maladjustment which was due not to the inefficiency of the workers but to change in industrial organization. The displaced employes had not been in a position accurately to foresee these changes; the appearance of the machine in the workroom was usually their first warning that they must seek other occupations. Time was lost in the effort to make the required readjustments. It does not appear that this loss of time was a necessary evil. On the other hand, it is evident that solutions were possible, and that the suffering of the workers was due to the fact that readjustments were matters of chance rather than forethought.

There is another fact, almost as important as the introduction of machinery, and that is the failure to introduce it. Of the 306 binderies visited in the course of this investigation, including temporary departments of printing offices, lithographing establishments and other branches of the industry, there were only nine in which no handworkers were employed.

In 234 some machine was used.

In 66 no machines were used.

In 6 the use of machines was not ascertained.

In 20 a gathering machine was found.

In 269 no gathering machine was found.



In 17 the use of a gathering machine was not ascertained.

In 112 a folding machine was found.

In 181 no folding machine was found.

In 13 the use of a folding machine was not ascertained.

Several employers discussed the use of machinery and gave their reasons for not introducing it. Small firms could not run the risk of investing capital in machines which might change soon again. It was better to be a specialist in one process and give out part of the work to other establishments. Others did not have large enough orders to keep a machine for one process in motion all day. High rents prevented others from providing larger space for machinery. Others were inert. As long as there were girls willing to take low wages for handwork, it was just as well to continue in the old way.

This failure to introduce machines brings about a diversity in methods which is very confusing to the worker. It prevents the establishment of a standard and makes necessary a different bargain in each factory. "You see every bindery is a little different," said one woman; "when you go to a new place you never can tell what it will be like." In so far as machines compel uniformity, they help to standardize both processes and conditions of work.

The way in which machinery breaks up a trade into establishments making a specialty of one branch of work has been noted. The other form of specialization is illustrated in the case of employes who practise only one process in the workroom. This sort of specialization does not seem to be inevitable. In a bindery in New York where there were machines for every process, "all round" workers were in demand, and those who could turn from one process to another were not laid off. But, however great may be the demand for employes experienced in more than one line of work, it is the tendency of machinery to force a worker to practise only one. If you are a piece-worker, to lose practise means to lose wages. On the other hand, the machine will not yield its maximum profit unless it be kept in constant operation. Thus while general practise in all branches of the trade brings to the worker the desirable power of adjustment to changing conditions, nevertheless the em-

ployer's wish to keep his machines in motion, and the piece worker's eagerness not to lose the speed which comes from constant practise, both tend to organize the bindery force in separate departments, whose workers are not interchangeable. The same demand of the machine, that it be fed with enough work to keep it in constant motion, forces the employer either to specialize in one department, or to secure more orders and to enlarge his establishment.

It is obvious that the larger the establishment, the more successful will be the attempt to keep every machine in motion throughout the working day. The feeder of the machine will then have little opportunity to practise other processes. "Establishments are now so large that a woman learns only one process," said one superintendent; "for example, she becomes a sewer and does nothing but that." In the light of this fact, the census figures showing the size of establishments are significant. In New York State in 1905, 53.9 % of the total number of wage earners were employed in 26 binderies, 8.6 % of the total number of establishments in the trade. There were 6 more binderies counted in New York State in 1905 than in 1900 (304 in 1905, 298 in 1900) while wage earners increased 11.6 % or 832 in number.

Specialization shows itself in another way, namely, in an inability to turn from one kind of product to another. There is a large bindery in New York where several periodicals are bound. A girl employed there complained of the irregularity of her work. "It seems pretty hard on a girl," she said, "to have to stay home two days in the week and then have to work so hard the other days." Her employment was due to the different methods of binding different periodicals. Two weekly magazines were brought to the bindery on Tuesday and must be mailed on Thursday. Hand folders and wirestitchers were needed to bind them. An engineer's magazine must be bound between Tuesday and Friday. The work on this was hand folding, gathering by machine, and sewing by machine, instead of wirestitching. Another publication was brought from the printer on Friday and issued on Monday. It was folded by machine and wirestitched. On Friday evening and Saturday there was

no work for a hand folder or an operator of the sewing machine. Wednesday was the busiest day in the bindery; two magazines must be completed for the mailers on Thursday. Overtime was usual on that day. This girl could fold by hand, fill the gathering machine and operate the sewing machine. She worked from Tuesday to Friday. The issues of the magazine had been smaller than usual and her earnings were reduced. She reported that at hand folding, if there were plenty of work, she could earn seventy-five cents or a dollar a day. For filling the gathering machine the rate was eighteen cents an hour or one dollar fifty-three cents a day. But there had been so little work that her earnings in the past three weeks had been:

January 4th-10th, \$3.19;

January 11th-17th, \$7.75;

January 18th-26th, \$3.21.

If she had been steadily employed, she could have earned five or six dollars a week as a hand folder, or nine dollars and nine cents for filling the gathering machine. "There isn't much chance for a sewer any more in magazine binderies," she said; "you know nearly all the magazines used to be sewed, but now they are wirestitched."

When different kinds of orders demand different processes, the specialist must be prepared to face not only change in machinery, but change in the size or character of her employer's orders. This sort of change may affect the organization of the workroom. Recently a magazine, which had been gathered by machine, was enlarged by doubling the size of its pages. Thereafter a force of inserters was employed, and there was no work for gatherers. It may affect the process and its demands on the worker. In one bindery a little girl was employed to cut off books for one machine, earning four dollars. "I can keep up with the machine when the books are the right size," she said; "but it's awful when they're thin." It may affect wages. One girl who had been employed to operate the sewing machine in the book department was transferred to the magazine department where her work was to look over sheets folded by machine and to fill the boxes of the gathering machine. Her pay was



reduced from ten dollars to a wage varying from five to seven dollars according to the kind of work assigned to her. This transfer from work on one product to another requiring different processes was due to the fact that much of the book work formerly done by this firm was withdrawn by a large publishing house which had recently organized its own bindery.

If we trace the history of the folding machine or the gathering machine we find that with the development of automatic feeding devices the tendency is to dispense with the work of women and to employ men to care for the machines. It is not a displacement of women by men; it is rather the substitution of rubber fingers or other automatic feeders for women's hands, and as a result a reorganization of the force.

What then is the meaning of the census figures which tell us that in 1870 30% of the bookbinders were women and 70% were men, while in 1900, 51.6% were women and 48.4% were men? In the absence of any data as to the number employed in different branches of the trade in 1870 and in 1900, the answer must be in part merely hypothetical. Judging by present tendencies in the trade the cause of change in the proportion of men and women would appear to be two-fold. It has been pointed out that the share of women in hand binding is relatively small, that they do only the folding, gathering and sewing, and that the numerous processes of forwarding and finishing are usually in the hands of men. Hence in the early days of the trade, when hand binderies predominated, men were in the majority. In the development of the industry two important changes have taken place. With the introduction of machinery, many processes of forwarding and finishing were omitted, while others were combined in one simple operation. At the same time there was a great increase in the production of pamphlets, which need only to be folded, gathered, stitched and covered. The first decreased the relative number of men needed in edition binderies; the second increased the demand for the processes always performed by women. Thus it would appear that without any shifting of the line between men's work and women's work, the proportion of women steadily increased between 1870 and 1900.

If during the three decades between 1870 and 1900 there was a struggle between men and women and a transfer of processes to women, it seems to have left no trace on present trade conditions. The instances of this kind of transfer are so scattered as to seem the exceptions that prove the rule. The possibility of carrying on more processes than their present share in the trade does not appear to be a burning question among the women. One employer, in charge of an edition bindery, said that the issue had never been raised. "The women would just say, 'It's men's work.'" One girl, who had fed a ruling machine, work requiring no skill, was asked if she had ever wished to learn to operate the machine. "Oh, no," she said; "ruling is gentlemen's work. There are no lady rulers. The gentlemen have their hands in the ink pots all day, and no lady wants to get her hands inked like that." "A woman can learn to feed the ruling machine in a day," said another; "she doesn't need to bother with managing it." "The smell of the glue is awful," said another, speaking of covering; "it's men's work." Another, describing a machine which could fold, gather and insert, said, "It's men's work," although each one of these processes formerly had belonged to women.

Nor do employers appear to have given much thought to the question. One, an "art binder," said that the work of women was restricted only by the trade union, and that they were capable of doing men's work. He added, however, that a woman would find it difficult to do the work fast enough to make it profitable. Another, the superintendent of an edition bindery, said that the work of women was restricted by capacity, not by the rule of any organization; they would not have strength to handle the machines which the men operate. Another, a "job binder," said that he employed women for temporary work only, because they were not strong enough to lift books and be "generally useful." "If you employ a woman, you can't give her anything but sewing," said another job binder; "while a man can turn his hand to other things."

But the superintendent of a magazine bindery said that there was no process in his workroom which could not be done by women. "I could put a girl to work operating the cutting ma-

chine," he said, "if I paid her eighteen dollars a week. I could have a woman tend the large folding machines if I paid the union scale. I don't know why I don't, except that I don't see any good reason why I should."

In the course of the inquiry, there have been more numerous instances of the transfer of women's work to men and boys. Men have been found operating folding machines and sewing machines, feeding the ruling machines and folding and sewing by hand. Boys have been found emptying boxes of the folding machine, sewing by hand, cleaning off the books after they have been stamped, and operating the wirestitching machine. The development of automatic feeding devices for the folding machine and the invention of gathering machines and covering machines have caused these processes to be transferred to men in many binderies. Indeed, the census of 1905 showed that in the five years since 1900 the number of bindery women had not increased so rapidly as the number of men, and that women no longer outnumbered men.

A woman who had fed a point folding machine and was displaced by the "automatic" tended by a man, remarked, "A man is paid according to what he knows, and not according to what he does." It is certainly true that the tender of a large complex machine, with all the devices for feeding itself, must be one who knows rather than one who does. Women, without mechanical training, have small chance of adjusting themselves to new occupations.

In view of these changes, the future of women's work in binderies is hard to predict. In art binding a few well-educated women have proved themselves capable of performing every process from the folding of the sheets to the tooling of the cover. There would seem to be an opportunity for growth in this branch of the trade, and it is the opinion of some binders that women could be trained to carry on this work in all its departments. In machine binderies it would seem to be largely the lack of mechanical skill, or of opportunity to acquire it, which prevents women's adjusting themselves to new inventions.

The bookbinding trade is not an example of extraordinary industrial evils. Its significance is to be found rather in its il-

illustration of the common lot of women in many occupations. It is not alone in binderies that conditions of industry change rapidly; that machines cause a reorganization of work and then give place to new inventions and new conditions; that speed seems to be the most essential requirement; that women work exhaustingly long hours in the busy season; that specialization appears inevitable, although the continual repetition of one process weakens the power of adjustment which is most needed in a changing environment; that irregularity of employment means loss of all or part of the wages in the dull season; and that the income at best is scarcely sufficient for self support. The experiences of bindery girls illustrate these conditions, yet they also point to several possible methods of improvement.

The encouraging facts in connection with women's work in binderies in New York are, first, that the state has already begun a policy of deliberate intervention. It has prohibited the employment of children under fourteen years of age. It has safeguarded them between the ages of fourteen and sixteen, limiting their working hours to eight in a day. It has made increasingly strict demands regarding the sanitary conditions of factories. It has recognized the principle of limiting the hours of labor of women, however faulty its provision may be for this purpose.

Second, there is a growing interest in industrial education in public schools.

Third, more than twelve hundred bindery women in New York are members of the women's local of the bookbinders' union, while a league of employers has been formed to deal collectively with the union and thus to "abolish in the bindery trade the system of making individual labor contracts, and to introduce the more equitable system of forming collective labor contracts."

The bindery girls' experiences indicate that in so far as adaptation to change is a matter of chance, women are not profiting by changes or gaining new opportunities. On the contrary their standard of living is menaced by uncertainty. The danger to be feared is the danger of neglect. The remedy would seem to be the substitution of forethought for chance, the safeguarding of minimum standards by education, organization and legislation.

## THE TRAINING OF MILLINERY WORKERS

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"WE have no time for learners."—"Learning is nothing but running errands."—"It's always experience, experience they want, and I didn't have it, so what was the use?"—"Trade schools are no good. It is altogether different outside." These were some of the remarks heard at the beginning of an investigation of workers in the millinery trade<sup>1</sup> which led to an intensive study of the training of girls for that occupation. "Industrial education" is a large, general term. What it meant to the workers in one trade throws much light upon it, and suggests a method for dealing with a subject which is at present rather topheavy with theories.

Probably no trade in which girls are employed could illustrate better than millinery the present status of industrial education for girls in New York City. There are more women in this trade than in any other except the clothing trades. There are more classes in millinery than in any other women's trade except dress making. It is one of the first industrial subjects introduced into the school curriculum. Yet an investigation of workers in millinery showed that these classes were being formed when there was little information upon the most important factors in the problem of trade training—that is, the

<sup>1</sup>This article is based upon a report not yet published on *women at work in millinery shops in New York City*. It is the result of an investigation carried on for the Alliance Employment Bureau of New York from the autumn of 1907 until the spring of 1909. Two hundred millinery girls were interviewed at home or in the office of the bureau and questioned about their wages, hours, trade history, regularity of employment and training for work. Their names were secured from girls' clubs, trade classes, employment bureaus, and fellow-workers. More than two hundred shops, including all in which the two hundred workers had been employed since July, 1907, were visited and questions asked about training of learners, wages, hours, seasons, demand and opportunities for experts, and the employer's opinion of trade-school training.



girls, the schools where they had received their previous instruction, and the trade in which they worked.

It is not easy to describe the millinery trade clearly because the essence of the description is to show that it cannot be made clear. If the next few paragraphs leave the reader with an impression of chaos then the description has been successful. "The millinery trade is about twenty-five different trades," said one employer. This statement does not give a true impression because it does not show that each branch overlaps and penetrates into every other in a most confusing manner. Millinery shops are of all types, in all parts of the city, with all kinds of work. Broadly speaking, the establishments can be divided into wholesale and retail, and in general it may be said that in wholesale shops "it's speed we want," and in retail, "careful, neat hand workers." Actually, such definitions of the trade are not true to fact. Every variety of hat is made in all kinds of ways whether manufactured at wholesale or retail. There are "trimmed hats" and "untrimmed hats," "ready-to-wear hats," "artistic millinery," "home-made hats," and "tailor hats." At first glance, it would seem that the trade is an excellent example of the subdivision of labor. The important point to the worker, however, is that sometimes it illustrates this subdivision of labor and sometimes it does not. Trimmed hats are found in the same establishments with untrimmed and ready-to-wear hats, or with only one or with neither. Artistic millinery is found in exclusive private shops and in sweatshops. Tailor hats are made in the same establishments with trimmed and untrimmed hats or in shops by themselves. Home-made hats are found to be contract work for great factories, or "neighborhood work for a few friends."

Naturally, this lack of system and standard is reflected in the demands made upon workers. In general, it may be said that there are four stages in making a hat,—designing it, making the frame, covering the frame, and trimming it. And in general it may be stated that there are seven kinds of positions open to a girl looking for work in millinery. She may be a learner, an improver, a preparer, a milliner, a copyist, a trimmer, or a designer. But when a girl starts to look for work as preparer,



for example, she may turn toward a Fifth avenue shop where she must be a "neat worker" who can make frames accurately by hand, and "have an eye for color and form"; here she may advance from preparer to designer; or she may find her way into a shop a few doors away where she does not need to make frames because they have two girls who make all the frames; or she may apply at a department store where in one department she will have an opportunity to do all the kinds of work found in the Fifth avenue shop, "only not so particular"; or she may go into the ready-to-wear department where "you never make a frame but cover with straw and stick on a rosette"; or she may join the throng of girls pouring into a Broadway wholesale house, and as she walks up the stairs she may stop at any one of the five floors and enter a "millinery establishment." But in one she will be asked to do straw operating all day; in another to make dozens of wire frames a day; in another to trim hats by the dozen and never make frames; in another to work at nothing but millinery ornaments. In the autumn of 1908 she finds it difficult to get a position as preparer because "the machines are driving them out"; and in the spring of 1909 preparers are in great demand because "the styles have changed this season, and hand work has come back this month." In any case, she thinks herself fortunate if she works more than six months a year at \$5 a week in not more than three or four positions. No prophecy can be made about the kind of skill which will be demanded in any shop.

But if no two establishments are alike in methods of work, they all have one characteristic in common. The slack season descends upon employers and workers alike. Taking the employers' statements, the millinery year is at best only seven or eight months long, divided into fall and spring seasons. The fall season, starting on Division street and lower Broadway in July, gains headway in August, rushes up Fifth avenue in September, and then gradually spreads out north and south, east and west, lingering for the longest time where the current is least swift. Third avenue and Fifth avenue, Grand street and Harlem cannot buy early and all at once. In any case, the season disappears before Christmas. The spring season begins

in January, and gains speed until the Easter rush, after which workers are laid off in great numbers.

"It is terrifically hard work while it lasts," said one employer. If it is terrifically hard work for the employer with some capital, credit and business shrewdness, it is obvious that to the girl with no capital, no credit and no knowledge of trade conditions except as represented by her place, "laid off—slack" means an even more serious loss. According to census figures, 64% of the women employed in retail establishments are out of work in January. In August 65% are unemployed. In September, the busy wholesale month in the autumn, there is no room for 11% of the number needed in the spring. In June 45% are out of work. Of 639 positions in millinery held by the group of workers investigated, 447, or more than two-thirds, lasted less than six months. Although they sometimes found work in other trades when laid off from millinery, 60% of those who could estimate the time lost were unemployed more than three months in the year. "Millinery gets on my nerves," said one girl, "because there is always the worry about the seasons."

The following is a calendar of a girl who had worked in millinery for a year. She was particularly fortunate in getting subsidiary work.

August—Worked 3 weeks at millinery on Third avenue.

Worked 1 week on Broadway. Laid off—slack.

September—Looked for work.

October—Worked at millinery on Sixth avenue 4 weeks.

November—Worked at millinery on Sixth avenue 3 weeks.

Laid off—slack. Sold candy one week. Left to return to millinery.

December—Worked 3 weeks at millinery on Sixth avenue until the day before Christmas. Laid off—slack. Sold candy one week.

January—Sold candy one month.

February—Returned to millinery.

March—Worked at millinery.

April—Worked at millinery.

May—Worked at millinery. Laid off—slack.

June—Looked for work.

July—Looked for work.

The season also has its effect upon workroom conditions. "It's rush, rush all the time and then nothing to do." In 62% of the shops investigated the girls worked nine to nine and a half hours daily. A large majority had a working week of fifty to fifty-five hours. In only eight was the week less than fifty hours. In 86% of the shops the day's work lasted regularly until six o'clock or later—an important fact when the question of evening school work is to be considered. 71% of the girls worked overtime in the busy season. During the overtime season the total hours varied from less than ten up to fifteen a day.

The wages which workers in millinery receive are not such as to compensate them for short seasons and long hours. The average wage is between seven and eight dollars. Considered from the point of view of yearly income, the weekly average of seven or eight dollars is reduced 25 or even 50% by the slack season. A liberal estimate of the average wage, allowing for loss of time, would be five dollars. But the keynote of the wage question in millinery is lack of standard. The workers have no trade union large enough to sign contracts with employers. The only bargain is the individual bargain. If the method of payment is by the piece, "you never know what you are going to get." As one girl expressed it: "Piece work is bad because you are always fussing about the price. At that French place, they said they'd pay you seventeen cents a hat but at the end of the week you would find they had made it fourteen cents. It was awful. You had the same fight every season over the prices. Instead of giving you what you ought to get they'd say to themselves, 'We'll make it \$2.50 a dozen, and if they will work for that, all right; if not we can make it \$3.'"

A tabulation of wages received in 738 positions held by 201 workers shows what a variation in wages there is in positions called by the same name. The variations are as follows:

Learners: 0 to \$5.

Improvers: less than \$2 to \$8.

Preparers: \$2 to \$15.

Milliners: \$4 to \$12 or \$15.

Makers: \$4 to \$9.

Copyists: \$4 to \$15 or more.

Trimmers: \$6 to \$25 or more.

Facts such as these have been used in other countries as an argument for the establishment of minimum wage boards in millinery. Public opinion in this country does not yet demand such action.

If these facts about conditions in the millinery trade prove anything they prove that "learning to make hats" is a very different thing from "learning the millinery trade." The experiences of millinery workers would seem to suggest that in modern times, perhaps even more than in the days when industrial conditions were less complex, apprenticeship must include learning the trade as well as one process in it, if the workers are to be efficient. A milliner who does not know that millinery means machine work and hand work, speed work and careful work, that the seasons are irregular, that the wages are unstandardized, and that conditions are constantly changing, is in no position to become efficient. Such knowledge is part of her job, and it is as necessary that she should understand her various relations to the trade in which she is working as that she should master the technique of the machine that she is operating. Power to adapt to different types of establishments, to varied kinds of work, and to fluctuating seasons, rather than specialization in a particular process, is a practical necessity for the girl who would earn her own living. According to the testimony of both workers and employers she does not get this power in the trade itself; employers have no time for learners, and the girl finds that "learning is nothing but running errands." According to the same testimony, the schools do not know the trade and do not prepare their pupils to do any one thing well. In order to test the truth of these criticisms, millinery classes were investigated in the course of this study, and their graduates were interviewed.

The visits to these classes were profitable in three ways.

They brought out the prevalent ideals in regard to women's work, the tendencies in the past with respect to methods of teaching trade courses, and the possible questions which need to be considered in plans for the industrial education of girls. Half the group of workers investigated had attended classes where millinery was taught. There were sixty-two of these classes in the city, of which only three aimed specifically to prepare girls for trade. The others gave courses "for home and trade use"; that is, they aimed primarily to teach women to make their own hats, but girls could also enter the class if they wished to prepare for trade.

The three schools which aimed at trade preparation dealt with three different types of girls. One was founded in order to prepare the fourteen-year-old girl who is forced to leave school at the earliest time allowed by law; one would take no girls under sixteen years of age; the third gave training to immigrant girls of any age. They were all alike in that they knew little about their pupils' previous schooling or their experiences after they went to work. Only one attempted to make any investigation of trade conditions. In regard to methods of instruction, only one sifted its applicants by requiring them to state whether they intended to work at the trade. Only one tried to eliminate the unfit by taking girls on trial. Only one attempted any instruction in trade conditions, and that one found it difficult to give such instruction to the type of girls with whom it was dealing. The aim of this "academic" work was to supply the lack in the general education of the fourteen-year-old girl. To do this, courses in English, arithmetic and civics were given. Civics included "industrial history, cultivation, manufacture, and transportation of materials, citizenship, commerce, philanthropics, history of Manhattan and social ethics." The time allotted to English, arithmetic and civics was one hour a week for each. The course was six months long. All preparation on these subjects had to be done by the pupils during this one hour in the classroom. The graduates from only one of these schools had anything favorable to say about the work. After visiting the schools and following up the experience of the pupils who had taken courses there, it



was easy to understand why the girls thought that it was "altogether different outside." On the other hand, daily indications of the complexities of the conditions "outside" gave us a sympathetic realization of the size of the task which the schools had undertaken.

As classes in industrial training will ultimately find their way into the public school system, not only is it important to understand the aims and methods of the trade schools, but it is also desirable to know what has already been done in the way of industrial training in the public schools. At the time of this investigation millinery was taught in forty-five evening schools in New York City. Thirty-nine of these were elementary schools. The investigation of these schools was profitable because it threw light upon the function of evening schools, their connection with day schools, their conception of the aim of industrial courses for girls, and finally the effect of these ideals upon the actual formation of a trade class in one evening school.

The school buildings are very imposing. One finds no difficulty in locating them at night even at a distance of two or three blocks. A great dark building occupying about one-third of the noisy, crowded block, gives notice to the visitor that she is headed in the right direction. The school always looks impressively quiet and remote. Few windows are lighted and only one door is open. After picking her way through crowded streets, stepping around small children, narrowly avoiding collisions with innumerable boys and girls darting in and out among the crowds, the visitor finds the inside of the building quite deserted, and her footsteps echo in the great, gray, empty basement. She can find no one to direct her to the principal, but presently seeing a few girls straggling up the fireproof stairs she follows them to the assembly room, a waste of empty desks. At one end is a long desk where the principal is seated. Often she has been teaching all day in a day school. Soon a girl enters slowly and hesitatingly, and slips into a chair near the door, where she stays until the principal turns to her with, "What can I do for you?" Bashfully the girl comes up to the desk and whispers down into it that she wants "to take up millinery."—"Your name?"—"Sadie Schwartz."—"Address?"—



"— East —."—"Age?"—"Fourteen."—"Have you left school?"—"Yes." Sometimes the question is asked, "Are you working? At what occupation?" Sometimes it is omitted. Then the principal concludes, "Here are two cards. Keep one and give one to the teacher. The millinery class is down the hall on the right-hand side." This is the extent of the consultation before entering a class.

After the girl has been in the class a short time, she learns that most of the girls are taking the course so that they can learn to make their own hats. More and more girls come as Easter approaches. They can stay as long as they like, and go when they like. They can even keep on making their own hats for two years or more.

"It is rather unfortunate that the board of education supplies the materials," said one teacher; "because I have known of cases where the girls come simply to get a hat and then leave. For example, I know of one case where a girl at the end of a few weeks asked to be transferred from the millinery class and when asked her reason, said that she wanted to go into dress-making because 'I've got a hat and now I would like a dress to match.'"

"You don't learn anything in evening school," said a girl who was in trade; "every night it is a little on a hat, and one hat a year."

During the year 1908-9, a well-known educator asked the following question in a course upon social life and the school curriculum: "Upon what questions in the community would you desire to be informed so as to adapt a course of study to the social conditions in that community?" That question sums up the problem of industrial education. The schools which have just been described exemplify some of the chief methods advocated at present for making this adaptation. A study of them also shows what happens when there is little or no information, or desire for information, about the social conditions of the community in which such courses are being given. One of the best known city superintendents of schools writes in a recent report:<sup>1</sup>

<sup>1</sup> *Tenth Annual Report of the City Superintendent of Schools, New York City, July, 1908.*

"The establishment of trade schools by the public school authorities is now a matter of discussion in every manufacturing city in the land. Manufacturers and philanthropists alike are clamoring for the introduction of industrial training into the public schools . . . The true reason for industrial education lies . . . in the fundamental conception of modern education—to fit the child for his life environment . . . In the public discussion of this subject there has been much exhortation, much denunciation, much eloquence, but little practical wisdom or suggestion."

Such a quotation is itself full of practical wisdom, for it goes to the root of the difficulty in stating that the object of education is to fit the child for his environment. Yet if this is the purpose of schools, it is obvious that accurate knowledge of the environment is a first essential in educational plans. This raises a fundamental question in regard to trade-school training. Should we not start a department of investigation even before we form the trade school, and should we not continue such a department as long as the school continues? If the trade schools which everyone is advocating are not based upon accurate knowledge of the conditions they have to meet, it seems safe to say that they will result only in the disappointment of the girls, the increased exasperation of the employers, and the humiliation of the schools. Familiarity with some establishments, and "being in touch" with trade is not knowledge of trade conditions. Trade is complex. Preparing for trade is like preparing for the weather. You never can tell what is going to happen next. Weather prophets are not infallible, yet experience has proved that it is desirable at least to attempt to work out a scientific method of studying weather conditions. There seems to be no good reason why we should not apply scientific methods to the study of social as well as physical conditions.

For instance, investigation of the millinery trade proved it to be an industry in process of transition from home to factory, with all the confusion in processes that is involved in such transition. Yet only one of all the schools studied made any attempt to discover the demands of this trade. Investigation showed that an understanding of industrial conditions is as necessary for

efficiency as ability to make a hat. Yet only one school tried to give an understanding of those conditions, and the time given to such study was totally inadequate. Investigation proved that one cause contributing to short seasons and low wages was the oversupply of workers. Yet there were more classes in millinery than in any other trade in the city, except one. Investigation revealed the fact that instead of specialization, the ability to adapt is of primary importance to the worker. Yet psychology and practical experience alike make it clear that such ability cannot be given in a six months' course.

This brings us to the second factor in the problem about which there is little information—the workers themselves. When the whole subject of industrial training is in such an experimental stage it is unfortunate that only one school has attempted to keep systematic records of pupils. To fail to keep such records is like trying to erect a building with no knowledge of the materials. If such records had been kept it is probable that the attempt to train immature fourteen-year-old girls in six months for a trade like millinery would have been abandoned long ago. It is even possible that the advocates of trade education would have been driven to realize that efficiency in industry, as in everything else, depends not upon a desk knowledge of the three R's, but upon a sound, vital, general education which gives power of adaptation. Even a slight acquaintance with women workers in industry brings out the fact that they lack this power, which comes from training of the mind. Why have girls been permitted to leave school without receiving this training? If the first essential for fitness to survive in modern life is the adaptability which comes from a well-trained mind, and if the function of the schools is to develop such fitness, are they giving the required training? If not, can the curriculum be changed so that the general schooling shall be more real, more connected with life? It is a matter of concern to school authorities that so many children leave the grammar school before graduation. Out of 201 millinery workers, 104 began work when they were between fourteen and sixteen years of age; eight started before they were fourteen; twenty left school before they were fourteen. Of these 201 girls, 152

attended school in New York City. Of these 152, eight attended parochial schools, 144 public schools. Of the 144 who attended public schools, only thirty-three were graduated. Such facts are used as arguments for starting trade schools which shall prepare girls and boys for their life work. To some of us they seem to be cogent reasons for trying to discover how these grammar schools can be revitalized so that the graduates will be prepared for life. It is said that the pupils leave because they do not see that school is preparing them to earn their own living. The one hundred millinery workers who had studied in trade classes said that the instruction there did not help them to earn their living.

Where does the fault lie? A study of one trade in which girls are working suggests that reorganization of general education is the most vital factor in industrial training. This suggestion may be mistaken; for it is based upon knowledge of conditions in only three trades for women—millinery, and two others investigated at the same time. It is evident that the question can be conclusively answered only after exhaustive study of girls, of schools and of trades. From the point of view of manufacturers, workers and educators, such investigation is of primary importance. To those who are eager for plans by which individual girls may get training immediately, the comparatively slow gathering of information does not appeal. Nevertheless, such information will have to be obtained sometime. Such investigation should be systematically made. It is not easy, but it is practicable, if we reduce the problem to its simplest terms. We should divide up each city into comparatively small units for investigation, the village communities, as it were, that make up the city. By taking the schools as the center of these communities and by studying the pupils—their personal and family history, their education, and their experiences in trade,—it would be possible to collect information which would give a sound basis either for reconstruction of the general school education or for the formation of a system of trade schools.

## TRAINING FOR SALESMANSHIP

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SINCE women began to be employed in mercantile houses, the public has gradually become accustomed to inefficient service. Since their employment has been extended from a few departments to most of the departments, and since public school children and ambitious factory girls alike have competed by thousands for department-store positions, the public has gradually accepted this kind of inefficiency as characteristic of retail employes. Yet at times customers grow restive. At times the marginal increase in buying which can be stimulated by intelligent service is abruptly checked by the absence of intelligence. This is a serious matter to competing concerns. The volume of sales is influenced not only by the quality of goods and the appearance of the store, but by fractional differences in courtesy and understanding. How to acquire employes with such qualities, or how to develop such qualities in employes, has become a managerial issue.

The acuteness of this issue is illustrated in the everyday experience of the department-store customer. You go into a store with the intent, we will say, of buying a linen collar. Having discovered the counter where such articles are for sale, you make toward it and glance with an unkindly eye over the stock displayed. Such collars as hang suspended from the steel display form have eyelet decorations too obviously machine made, whereas your desire is for something less pretentious and more genuine. You attract the eye of a young person and make known your wants. "I don't wait on collars," she replies; "the saleslady at the end of the counter will attend to you." Thereupon you pursue "the saleslady at the end of the counter," who has been conversing with her friend who "waits on neckwear." You ask her if she can wait on you, and somewhat reluctantly she returns. Signifying your taste as



to collars, you casually observe the expression of disapproval with which she pulls out a box and sets it before you. She waits in silence while you look over the contents of the box. If you ask her the price, she tells you but vouchsafes no further information. Then with a desire to solve the situation rapidly, you seize the first collar that appears to you at all suitable, order half a dozen like it, look at your watch and discover that over twenty minutes have passed since you entered the store, receive your change and depart.

You have your collars, and your unreasoned feeling is that you have secured them as against the enemy. You have a sense of having been actively combating a negative opposition to something, an indifference not fundamentally hostile perhaps, but translated into hostility because of your too definite intention to purchase a specific article. You reflect that had you removed two of the much-eyelitted collars from the steel display form and handed them to the lady with the remark that you would take them, she might have viewed your interruption of her conversation with more complacency. But you required her to lift down a box. Your choice was not to her taste. Your order might perhaps have been called conservative. The result was a perceptible variation in the density of the atmospheric waves between the saleslady and yourself.

Yet on further reflection you realize that after all your saleslady cannot be held accountable for duties which she does not understand. You have wanted attention, advice, understanding service. After some difficulty you have secured a collar. The saleslady thought that you were quite capable of knowing what you wanted and choosing it for yourself. In the concrete both the saleslady and yourself have meant the same thing. Where you have differed was in your interpretation of ways of reaching the concrete. You have wanted an expert; you have met a "counterserver."

And what but "counterservice" can we expect of the thousands of young girls drafted yearly into this occupation? Neither training nor experience is required of them. They may be and are both casual and unskilled. Saleswomen longer with the house show the newcomer where stock is kept, and if



kindly disposed, give her suggestions as to the personal peculiarities of the buyer. Some one tells her the custom of the house as regards saleschecks and other records, and with this preliminary information she sallies forth to represent her employer to his clientele. Her time is occupied by her duties so far as she understands them. She stays in the department to which she is assigned, keeps her stock dusted and in order, tries to remember what new stock comes in, and when customers are around does not converse more than necessary with her co-workers; if a customer asks for something that is in stock, she produces it and awaits decision; if a customer asks for something that is not in stock, she states the fact.

She may not be notably careless and inattentive. Floorwalkers and department managers seek constantly to eradicate careless employees, to arouse in their force a feeling of loyalty, a desire to give conscientious service. It is more difficult to set forth a notion of adequate service. When a girl is doing her best, it is not always clear how to suggest to her that her "best" might be higher in standard, that instead of merely producing an article asked for, she might be of real service to the customer in suggestions and in information about the stock, that in other words she might be an expert instead of a mere counter attendant. To quote from a recent book:<sup>1</sup> "For a salesperson to know what gives the article its price value, whether it is style, novelty, utility, bulk, rarity of material, to know under what circumstances it can best be used as a staple, for beauty, for use, for occasional service, for steady wear—and many points other than these—and to adapt this knowledge to each customer—is to become a specialist and to be sought after for advice as the man or woman in the private office is, not to be approached as a mere lackey to pass goods back and forth over the counter."

But how is this expert knowledge to be obtained? How is the salesperson to learn to recognize types of personality, to grasp what selling points make the strongest appeal to each

<sup>1</sup> *The Art of Retail Selling*, by Diana Hirschler. New York Institute of Mercantile Training, 1909.

type—to whom she should emphasize utility, to whom beauty, to whom durability—and by what personal qualities she may gain the attention of each type, focus attention till it becomes interest and finally clinch the decision to buy? How is she to be taught the use of her own personality as a business asset?

Nothing in the past experience of most saleswomen can give them a clue as to the "how." Few have bought extensively, and few have an environment which would make them judges of quality. Even inborn taste must suffer through inexperience. The saleswoman cannot rely on her own judgment for the ability to give expert advice, and who is there to teach her? Her co-workers are not competent, the floor managers are not competent, the department buyers are too busy. As to understanding her customers, she is still more hopelessly without a source of instruction. She continues to do her best, and her best is ineffective.

Her work is routine, monotonous. She regards it and herself mechanically. As an unskilled laborer, she can command no more than the wages of unskilled labor. She finds herself confronted with the need of dressing and appearing "like a lady," when her pay, which represents the worth of her service to her employer, cannot be regarded as more than a supplementary wage. Advancement is slow, and the limit to advancement appears to the majority inexorable. Low wages in themselves tend to chill and depress ambition. The girl's mechanical attitude toward her work is intensified. Lack of training, low wages, lack of opportunity for training: these characteristics of the situation form a circle within which the saleswoman stands bound.

And not only saleswomen, but customers and merchants suffer from this state of things. Constantly annoyed by the inadequacy of their force, some merchants have already made a beginning toward stemming the tide of unsatisfactory service. Many a store now has classes to instruct newcomers for an hour or so each morning in making out saleschecks, and to inform them as to the policy of the store. In some cases regular morning talks for a half hour every day must be attended by new and old hands as well, with the idea that matters of com-

mon interest may be freely discussed and that ideas of loyalty may thereby be instilled. Yet while these classes tend to produce right feeling toward the work and hence are fundamentally useful, they represent only the germ of vocational training.

For that is what saleswomen need—training for their particular occupation, instruction in the definite principles of applied psychology upon which their day's work is based. What form such instruction will ultimately take is still matter for conjecture. No one will assert that experiments now in the making are final, but simply that by their initial success they point the way to more conclusive organization. It may be of interest if a statement is made here about the training for saleswomen now offered in Boston and New York.

The Boston experiment was begun in 1905 under the auspices of the Women's Educational and Industrial Union. A class was started with eight young girls who were given lectures and some practise selling in the food salesroom and handwork shop of the Union, but after their three months' course those who found store positions had to go in as stock or cash girls. In January, 1906, when the second class was started, the coöperation of one store was secured. The Union class was allowed to sell in the store on Mondays for the experience and a small compensation, and the firm expressed a willingness to consider promising candidates for positions in their store. Yet as the school had nothing definite to offer its pupils, it failed to attract the type of girl most wanted by the stores.

It was felt that more coöperation with the stores was necessary. The plans of the course were explained to several of the merchants and the coöperation of six leading stores was obtained to the extent that the superintendents formed an advisory committee, meeting once a month with the president of the Union and the director of the class for conference. The policy, as planned with the advisory committee, was that candidates should be sent to the Union class from the stores, and admitted to the school if approved by the director. After one month in the class, candidates were promised store experience in the store which had accepted them, on Mondays, and the stores paid for this service \$1 per day. They were also

guaranteed permanent positions in these stores at the close of the course, if their work was satisfactory after one month's probation.<sup>1</sup> On this basis, a class with sixteen pupils opened in October, 1906. It was found, however, that more store experience was necessary for the best results, and the time schedule was accordingly changed so that every day from 8.30 to 11. and from 4.30 to 5.30 the pupils were in school and the rest of the day in the stores. This half-time work was paid for by the stores at the rate of three dollars a week.

When the next class opened in February, there were nearly one hundred applicants, from which the school selected twenty-one, the limit of the class room. Many applicants gave up positions which they had already secured, for the sake of the training, and others for whom there was then no room, filled a waiting list. Since then, the school has been busy making history. The following statements by Mrs. Prince, director of the school, explain the most recent changes: "At first, the stores paid the girls \$3 a week for half time, but since last September (1908), the girls have been given full-time wages and allowed the three hours each morning for three months of training. The stores found the graduates so efficient that they cordially made this concession, and at the same time asked if I would choose candidates from the stores. This I do now, going to the superintendents' offices and interviewing the girls there.

"The girls chosen are usually from the bargain counter, or those who are to be promoted from cash and bundle work or those who have shown good spirit, but who have gone to work at fourteen years and lack training and right standards. Sometimes girls who have just entered the store are chosen. Wages of candidates range from \$5 to \$8, but at the end of the course a graduate is guaranteed \$6 as a minimum wage, and her advance depends upon her own ability.

"The girls are in the school every day from 8.30 to 11.30; then after an hour for luncheon, they go to the stores for the rest of the day, that is, from 12.30 to 5.30. My plan with the

<sup>1</sup> *Training for Saleswomen*, by Lucinda W. Prince. *Federation Bulletin*, February, 1908.

class is to take one big subject every day: all lectures are reviewed orally and the girls write all significant points in note books."

The subject matter of the class, planned with the view of making efficient, successful saleswomen, has emphasized five main lines of study: 1. The development of a wholesome, attractive personality. Hygiene, especially personal hygiene. This includes study of daily menus for saleswomen, ventilation, bathing, sleep, exercise, recreation. 2. The general system of stores: sales-slip practice, store directory, business arithmetic, business forms and cash accounts, lectures. 3. Qualities of stock: color, design, textiles. 4. Selling as a science: discussion of store experiences, talks on salesmanship, such as attitude to firm, customer, and fellow-employee, demonstration of selling in class, salesmanship lectures. 5. The right attitude toward the work.

The following schedule gives the present arrangement of lectures and talks in the Boston school:

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
8:30	Store discussion	Hygiene	Sales slip	Arithmetic	Sales slip	Business forms & cash acct.
9:15	Salesmanship talk	Outline in note-book	Demonstration of salesmanship by selling in class	Color	Outlines and notes	Textiles
10:00	Notes	Lecture	Notes on sales observed	Color	Lecture	Textiles
11:00	Spelling English	Notes		Spelling English	Review of Lectures	Notes

The New York experiment is of more recent date, and has shaped itself differently. Its beginnings in the fall of 1908 are due chiefly to the efforts of Mrs. Anna Garlin Spencer, who persuaded the officers of the board of education to introduce a class in salesmanship in the public night schools, and to Miss Diana Hirschler, formerly welfare secretary in Wm. Filene's Sons Co. of Boston, who conducted the class. The class was intended primarily for saleswomen already at work who wished



to equip themselves more thoroughly. The first night there was not a single enrolment, but as news of the course spread, the attendance reached an average of twenty-five. This in itself—this attendance night after night of girls already tired by their work during the day—is evidence of the strong appeal made by the class.

Unlike most other kinds of industrial training, salesmanship classes require neither tools nor special equipment. They do require teachers and a text book. While Miss Hirschler was teaching her classes, she began writing a text book and making plans for training other teachers so that the value of the class might be extended to more than could be enrolled for her instruction. The newly-established New York Institute of Mercantile Training engaged Miss Hirschler and adopted her plans. Classes for window trimmers and sign writers were already under way. To them were added offices and staff for a school of salesmanship. It was a moot point for a while whether classes for salespersons should actually be held in these offices, or whether the scope of the work should be extended to reach the present directors of salespersons,—the store superintendents who now in so many cases hold morning classes for sections of their force. This latter course, Miss Hirschler decided, would be the best one to follow. Whereas by the former plan she might make more efficient a handful out of the thousands of salespeople in this one city, by the latter plan she would indirectly be reaching thousands not only in New York, but in as many other American cities as had stores to coöperate with her. The essential thing, she felt, was to train teachers. At present there were few even would-be teachers. While we were waiting for them, we might use the present situation by helping to make more efficient the involuntary teachers, the men at the head of stores who now ineffectually seek to grapple with the difficulties of their selling force.

Accordingly a correspondence school was started for store superintendents. While the general outline of the text book is followed, this course is adapted individually to each student. In a number of cases Miss Hirschler has visited the stores, personally looked over the situation, and made suggestions as to



the organization of salesmanship classes, the selection of applicants, and the best methods of securing the coöperation of the salespeople. Enrolled in her course are store superintendents from New England, the South and the far West. Each one of these men is in turn reaching hundreds, sometimes thousands of salespeople.

The next step neither Miss Hirschler nor we who are the consumers can prophesy with certainty. Yet it seems reasonable to expect that in time store officials, who at best can give only a small part of their time to teaching their employes, will wish to be relieved of this task by professional teachers of salesmanship who, like other vocational teachers, give all their time to their work. By that time we shall have passed out of the period of experimentation. We shall have reached a point where we can say with definiteness what part of the student's time should be spent in the study of textiles, what part in the study of color and design, what part in the study of applied psychology. We shall have reached a conclusion as to the relative value of lecture work and practise selling.

Selling goods may thus have become as definite and recognized a vocation as plumbing or dressmaking. Thus defined and established, this vocation which could have been taught in the beginning only by the faith and courage of private interests, may come to its own by recognition among the vocational day courses now being started in our system of public instruction.

## THE EDUCATION AND EFFICIENCY OF WOMEN<sup>1</sup>

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**W**OMEN in modern production are a misfit. They are like the dog that puzzled the expressman in the classic story. "*He* don't know where he wants to go, and *we* don't know where he wants to go; he's eat his tag."

Is not this sense of misadjustment, of being astray, due to the fact that, industry being arranged to meet its end of private profits, human nature has to adjust itself as best it can to industrial conditions, instead of industrial conditions adjusting themselves to human nature? The troubles that result from this system make themselves felt everywhere, among men as well as women, but most seriously among the weakest competitors, and especially among wage-earning children and women.

My subject is education and efficiency, but I do not propose to go over the well-worn arguments to show that we ought at once to establish schools for trade training. It is now pretty generally understood that this is true. I want to raise a more far-reaching question—can women be economically efficient in production, production being organized as it now is?

The lives of both men and women have certain permanent aspects; whether in the stone age or in the twentieth century they must rear their descendants, they must between them produce material support for themselves and for the growing generation, they must lead their own personal lives and feed and discipline and "invite" their own souls and minds. There is always this trinity of their racial, their economic, and their inner life.

But while both men and women have this three-fold function, the differences in their racial life involve far-reaching economic consequences. Motherhood is an occupation as fatherhood is

<sup>1</sup> A paper presented at the meeting of the Academy of Political Science, December 3, 1909.

not, and this deeply affects woman's industry. Even in the primitive world, where industry is largely a household matter for all, woman's activity is bound to the hearthstone more closely than man's, for the bearing and rearing of children is intertwined with all her other business, and conditions it. This makes housework with all its ramifications and outlying branches the great feminine profession throughout the ages.

Consequently when industry, passing from the control of the worker to that of the owner of the business, assumed its modern specialized form and took work and workers out of the home into the factory and workshop, this change, carried out with no regard for the results on the workers themselves, affected the lives of women in ways which are not paralleled in those of men. Besides other consequences, it greatly lessened woman's efficiency both as mother and as worker.

Under the old régime there was an effective unity in women's lives, an organic harmony of function with function. The claims of motherhood and of work upon woman harmonized, because she herself was in control and arranged the conditions of her industry to fit her duties and disabilities as wife and mother. For herself and for her household she planned the various tasks with a view to strength, convenience and training for development. Besides the unity of motherhood and industry, there was unity of education and industry, of preparation and practise. The girl was essentially an apprentice of the housekeeper, whether mother or mistress. Her lessons were indistinguishable from her labor. From a little child she was working as well as learning, and also till she was at the head of her own home she was learning as well as working. Read Solomon's description, or even better, Xenophon's charming sketch in his *Economicus*, for a picture of feminine household industry on a rather large scale. We need not conceive this stage as ideal. The point is that there was a natural adjustment of work to worker which modern industry undermines in three ways—in separating work from the home, in separating work from education, and in shaping the conditions and concomitants of work without regard to the powers, tastes, or needs of the workers.

Before endeavoring to analyze these effects let us consider various types of modern women in whose lives all the different difficulties interact, shaping their fate, too often, in most strange and inharmonious fashion.

First let us take the professional woman. If she leads a single life she cuts the Gordian knot of the incompatibility of work and marriage. This is simple, certainly, but quite abnormal. While it is doubtless a happy solution in many cases, it is certainly undesirable that large numbers of women should adopt it, especially if we may suppose that a class of celibate professional women withdraw from the race the inheritance of some degree of picked intellectual ability. It has been argued, by Sidney Webb if I remember rightly, that the rule disqualifying married women for public-school teaching tends to keep a selected group of women out of marriage; a practical exclusion from marriage of women who succeed in medicine, law, architecture, art and business would be, from this point of view, at least an equally serious loss as regards quality if not quantity.

If a woman is able to combine professional activity with marriage and motherhood, as some have been so brilliantly successful in doing, this is because professional work is often more like the old housework than is factory work as regards elasticity and the possible adjustment of time and amount of work to personal convenience.

As our second group let us take well-to-do married women who command domestic service and nursery assistance. Such a woman has the maximum of freedom in ordering her own life, yet, even so, under the mould of the general situation, how chaotic her life history is likely to be. Suppose that she is at a finishing school till she "comes out" in society, or that she goes to college and at twenty-two comes home again to live, not choosing a professional career. Although she is only half conscious of the situation she practically waits for a few years to see whether or not marriage is to be her lot. Probably her natural mates are not yet financially able to offer marriage, and, again, more or less conscious of her rather humiliating situation, she becomes seriously and definitely interested in some specialized activity. By distinct preparation or simply by prac-

tise she fits herself for the work that she has found to do; then, just as she is well engaged in this work, the critical moment arrives and she marries. For some years her profession is motherhood, though this is the last thing for which she has thought of fitting herself; and then again her life takes a new turn. Her children are no longer children; they are at college or at work or married; or her daughter at home, perhaps without liking to say so, yearns to be intrusted with the home administration, for a while at least. Whether or not the mother resigns any of her housekeeping duties, motherhood is no longer a business that fills her days and gives adequate employment to her powers; again she seeks for occupation.

Such women, with the unmarried women of leisure, make the most disposable force in our society, but one very variously disposed. Some of them, the spenders, live purely parasitic lives, absorbing the services of others and consuming social wealth without rendering any return. Others, at the opposite extreme, perform work that is unpaid and that could not be paid for, work that demands experimentation, initiative and devotion. The work of a man or woman who combines with the chance gift of economic freedom the chance gift of genius consecrated to service—the work of a Charles Darwin, a William Morris, a Josephine Shaw Lowell, or a Jane Addams—is a pearl beyond price, but probably common people (that is, most of us) work better under a reasonable degree of pressure.

Our next social class is the married women who do their own work, as we say. For them life retains in the main its primitive harmony, except that they are less likely than women of old to come to their life work adequately prepared to carry on a household on the highest plane practicable with the resources available under contemporary conditions.

Our last class is the working women. The woman who does her own work is not, in the curious development of our phraseology, a working woman, though we may believe that the mother of a brood of children for whom she cleans, cooks, sews, washes and nurses does some work. On the other hand, the working woman is not, in our common phrase, occupied in "doing her own work," and truly, the work at which she is set might appear



to be almost anybody's rather than hers, if its unsuitability to her needs and powers is any criterion. While her school, however imperfect it may have been, was designed to meet her needs, was administered with the object of advancing her interests, her workshop, on the contrary, seeks quite a different end—the owner's profits. If she prospers or suffers through its conditions, that is a wholly alien consideration. The work is not her own, both because the product is not hers and because the conditions under which the work is carried on have no relation to her needs.

The education of the girl who is to enter industry generally fails as yet, however well intended, to fit her effectively for her working career. Most working girls, indeed, leave school at fourteen, when they are in any case too young to be efficient. Then come the proverbial wasted years of casual and demoralizing employment, till at eighteen or so the young workers find their footing and for five years, it may be, rank as working women. Then to most of them comes marriage. They entered industry untrained, now they enter married life untrained, if not unfitted, for such life, and at a less adaptable age than earlier. To a considerable extent the economic virtues of the factory are virtues that the girl cannot carry over into her housework, and its weaknesses are weaknesses that lessen her success as wife and mother. Industry tends to unfit her for home making if it tends to make her a creature of mechanical routine, unused to self-direction, unplastic, bored by privacy and not bored by machine monotony; if it accustoms her to an inapplicable scale and range of expenditure which assigns too much money to clothes (which are necessary to the status and earning power of the worker as they are not to mothers and children) and too little to adequate nourishment which, important to the adult, is fundamental to the health of children. Worst of all, the employments of working women tend, as has now been shown, more commonly and more seriously than has been at all generally understood, to unfit women, nervously and physically, for bearing children.

When we try to disentangle the confusions illustrated in these varying types of lives we see that one of the main causes of

trouble is the fact that modern industry is largely incompatible, while work lasts, with the functions of wife and mother or that at least it militates against them. We have seen some of the ways in which this simple fact of the incompatibility of two fundamental functions distracts and deforms women's lives.

A result of this divorce of industrial and married life is the fact that it is impossible to predict whether a given girl will spend her life in the home or in the working world, commercial, industrial or professional, and that consequently she commonly fails to prepare for either. We have indeed some professional training, some business training, and are just beginning to have some trade training; training for the home vocations has hardly got commonly beyond some cooking and sewing in the grades—most desirable as far as it goes. In Utopia, I dare say that every girl when she becomes engaged to be married, receives, besides her general education and her trade training, six months of gratuitous and compulsory vocational preparation for homemaking, and that this training for the bride, and a course in the ethics and hygiene of marriage for both bride and groom, is there required before a marriage license can be issued; moreover, I imagine that there every woman expecting her first child is given a scholarship providing instruction and medical advice for some months before and after the child is born, the conditions depending upon individual circumstances. In the real world some of our grossest evils are related to the lack of preparation for the most vital relations of life. Uncertainty as to her vocation not only prevents a girl's being trained for either household or industrial life, but it makes her a most destructive element in competitive wage earning. She does not care to make herself efficient in industry, for she hopes soon to marry, and meanwhile the semi-self-supporting woman drags down the pay of women wholly dependent on their own earnings and also that of men, perhaps including that of the man who might marry her but cannot afford it, thus increasing the chances against her in the lottery of marriage.

While this conflict between the call to industry and the call to marriage confuses women's lives but not men's, the divorce of education from practise is much the same for men and for

women both in its grounds and in its results. And first as to the causes.

Industry being organized by the employer for his own purposes, the worker is regarded simply as a means to the commercial end of maximum cheapness of production. This cheapness is attained, or at any rate has been commonly supposed to be attained, by the maximum of specialization and the maximum of routine and uniformity. The specialization of functions has appeared to the employer to make any education of the worker unnecessary and to make it possible to eliminate from the workshop the costly and troublesome business of teaching the trade, a policy that has had consequences to industry and citizenship that we are just beginning to realize. Up to this time the school has not averted these consequences by creating an effective substitute for apprenticeship. In the old days it could properly devote itself to academic branches, and even today, largely as a matter of habit inherited from those days, schooling continues as a general thing to have no bearing on the productive labor that the pupils engage in later, but is wholly general, with the marked defects as well as the merits of education of this type.

Not only has industrial training thus fallen between two stools, having been dropped from the workroom and not undertaken by the school, but the whole program of general education is controlled by the industrial situation. The routine and uniformity of modern production mean that the worker must work at the standard pace for the standard number of hours or drop out. This is less true of piece work, at least in theory; in practise the worker's need of money is likely to force the pace and stretch the hours to the limit of possibility. As regards occupation it is all or nothing; the employer will not accept workers who cannot give themselves entire. This is, I think, the element of truth in the emphasis of socialists on their thesis that the worker sells not his labor, but his labor power. So children once surrendered to competitive industry are surrendered altogether and for good—they are absorbed and exhausted.

Because work is so organized that it is not fit for young people immature in body and mind and that they are not fit for it, we

keep them out of all real work until we are ready to have them do nothing but work. And conversely, until they go to work once for all they are occupied with schooling and schooling only. Consequently life is broken into great indigestible lumps—first all study, then all work,—into unrelated phases which fail mutually to strengthen each other. Work and study ought to go on together, work beginning in the kindergarten years and education continuing to the end of life or at least so long as the mind remains receptive.

When boys and girls are needed to help at home while they are getting their schooling the situation is more natural, and if the child is not under too much pressure, better. But the child of the tenement or the fashionable apartment house cannot get this training in helpful labor parallel with his schooling as does the boy on the farm. So all work is postponed till school days are over and all schooling stops when work begins. One result is that some of us are busy teaching subjects fit only for mature minds to immature boys and girls on the assumption that they will never have another chance at education. I was once in a French boarding-school where the pupils learned by heart critical estimates of classical authors whom they had not read. On my questioning the practise I was told that though these sentences were not intelligible now they would recur to the pupils' minds when in later life they read the authors in question.

We need to study the psychology of intellectual hunger and the history of the ripening of the human mind. Surely there should be opportunities for the mature to study history, economics, politics, natural science, religion, literature and philosophy,—opportunities, I mean, for intervals of continuous, intensive study by those inclined to it, not solely opportunities for weary, sleepy men and women in fag ends of time to hear lectures or to prepare for examinations.

In work planned as employers have planned it not only is education eliminated from employment and employment deferred to the close of the generally meager period of education, but the advantage of the individual is disregarded in the arrangement of the work, to the great disadvantage of the worker and the community at large, if not, in the first instance, of the employer.

One of the effects of this is the waste or misuse of all laborers, like the married woman or child, who cannot give standard work under standard conditions. In the work of the school or the household, which is planned with reference to the worker, there is room for the delicate, the dull, the special student, the child and the elderly person. No one is unemployable, no portion of strength or capacity is unusable. In the factory of the Amana community, which is conducted, as one might say, on family principles, I was struck by the large number of really old men at the looms. Those who can no longer endure the hot work in the hay fields find occupation here, and those who can advantageously work irregularly for a few hours a day, but not more, are given the employment that they are fit for and that is good for them. This capacity to use all available labor power is one reason, perhaps, why the Amana communists wax richer year by year and hire outside workers to do much of their hardest work; perhaps, too, it makes for a happier and longer, because more occupied, old age.

But in competitive employment workers who are below the standard, if not excluded and therefore wasted, are likely to be forced to conform to unsuitable hours and working arrangements. Moreover they are likely to drag down wages and to render more difficult the attempts of the normal workers to improve conditions. The standard minimum wage, with provision of "sub-minimum" wage scales for the handicapped, seems the only device to prevent their destructive effect on wage standards. As regards children, society adopts the policy of complete withdrawal from industry, not because it is good for a child to spend all his time in schooling, but because, as has been said, industry will not adapt its routine to juvenile requirements, and precludes almost all chance for education after work is once entered upon.

As regards married women in industry, the situation is much the same as the situation with regard to children. They should stay out wholly because it is disastrous to the family for them to go in wholly and unreservedly, because their subsidized competition is likely to be injurious, and finally because the conditions of work are apt to be ruinous to their health. And



yet for women after marriage to abstain from all employment outside the household is often wasteful and altogether undesirable. If married women could work some hours a day, or some days a week, or some months a year, or some years and not others, as circumstances indicated (as they conceivably might do under a more elastic and adaptable organization of employment), and if they could do so without damage to wage standards or workshop discipline, it would seem advantageous, in more ways than one, for them not to drop out of industry at marriage. Both marriage and employment might become sufficiently universal to make it usual to train every girl for both, at least in a general way. If marriage did not appear to girls (quite fallaciously in most cases) as a way of getting supported without working, their interest in increasing their earning power would be greater; if wives were normally and properly contributors in some degree to the money income of the family, marriage would be more general and, above all, earlier, especially if the giving of allowances to mothers, of which Mr. Wells dreams, ever came into practice.

All this troubling of the waters of life is so familiar that it is perhaps not possible for us fully to appreciate or understand it. The conditions can doubtless be much ameliorated, but no reforms can make right a system that sins in its foundations. As has been said, the system sins because it puts production before people, with the results, so far as women are concerned, that we have seen. Two of the fundamental parts of their activity are made almost incompatible, so that we have unmarried workers and unworking wives, and workers and wives alike untrained because of the paralyzing uncertainty of the future. Moreover, men and women alike suffer from the separation of education and work, which makes work dull and education unreal and gives to the boy and girl more lessons than they can digest and to the man and woman too few; they both suffer also, if not equally, from the industrial system which shapes all the conditions of industrial life to ends extraneous to the welfare of the workpeople.

That our lives are made thus to fit the convenience of industry, not industry to fit the convenience of human lives, is

historically explicable and even justifiable. So long as there is difficulty in getting the bare necessities of living every other consideration must give way. The overriding object must be the amount of product, not comfort or development by the way. Health and happiness are then a necessary sacrifice to mammon. They are luxuries which the poverty-stricken do not afford themselves. Moreover, to do things pleasantly, or even to do them in the way that is most economical and effective in the long run requires not only capital but a social direction of capital that can be the fruit only of a long and painful evolution. Because our industry is conducted piecemeal by dividend hunters it is carried on, if we regard it as a whole, in a near-sighted and extravagant way. Above all, it wastes talent and physical stamina, beside devastating the private happiness of employes, and nowhere is it more uneconomical than in its use of women's strength and capacity and, above all, in its wastage of her health.

We are just on the eve of being socially conscious enough to perceive these things and prosperous enough to afford a different policy. Is it insane to hope that in the fulness of time industry will be so arranged as to advance human life by its process as well as by its produce; to hope that we shall have, as one might say, a maternal government acting on the principles of the mother of a great and busy household who makes education and work coöperate throughout, who cares for her family and economizes and develops their powers and makes their complete welfare her controlling object? My contention is that while we cannot make women efficient in any complete sense under conditions which so militate against their efficiency, we can make them less and less inefficient as we shape education to that end, and as we get increasing control of industrial conditions in the interests of human life in its wholeness.

## STANDARDS OF LIVING AND THE SELF-DEPENDENT WOMAN

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**A**N investigation of the cost of living may look ultimately toward minimum wage laws, or it may aim at the creation of opportunities for industrial education which shall result in ability to earn a certain desired wage; but the immediate object of all such study is to determine a desirable standard, and every consideration of the cost of living is prefaced by a discussion of the importance and difficulty of fixing standards. The method must be to discover what expenditure the average family or individual under normal conditions finds actually necessary; but heretofore essential study of the habits and needs of self-supporting women has been lacking.

The following significant differences between wage-earning women and men have become apparent from an examination of census returns and a study of more than a thousand working women in and around Boston, in connection with the promotion of savings-bank insurance:

1. A large majority of wage-earning women are under thirty years of age. In our cities the average age is below twenty-five.
2. The larger part are living at home, or in the families of relatives, friends or acquaintances.
3. A very large proportion of those living at home turn in all their earnings to the family purse and receive back only so much as is necessary, without knowing whether their contribution is above or below the expenditure on their account. The young men of the family, on the other hand, are not expected to contribute to the family income, unless it be to pay board.
4. A woman is not usually responsible for the support of a family, nor is she looking forward to the carrying of such a burden.
5. She often has obligations for the full or partial support of

members of the family, but these obligations decrease or cease as she grows older.

6. She enters a gainful occupation with a different point of view from that of a man. It may be that she has obligations to meet, or it may be that she is a "pin-money girl"; but in most cases she is not looking forward to continuous self-support.

How, then, is the standard for women to be set? To attain a certain standard they may spend much less money, or with a given expenditure they may reach a much higher standard than would be the case if their conditions and outlook were the same as men's. On the other hand, the obligations resting on women may be, and often are, much greater than the demands on men of similar age. The income necessary to maintain a given standard of living may therefore be much less than we should anticipate, or it may be much greater. One thing seems evident—that the burdens will probably decrease rather than increase. Therefore the necessity for advancement and the responsibility for saving is recognized neither by the worker nor by the public.

These difficulties make intensive investigation the more essential, in order to discover the actual present cost of living of self-dependent women and to find out the significance of variations in this cost. Modern tendencies to reduce wages to the minimum cost of living or to force them up to meet the demands of increasing luxury may mean too serious results to permit of continued ignorance. The danger of setting the standard according to the needs of one group, thus working injury to another, must be averted.

The studies upon which this paper is based fall into two groups. One, of college graduates, members of the Association of Collegiate Alumnae, mostly teachers (317 in number), is easiest to interpret, because it is the result of study by persons of the same class or thoroughly conversant with the needs of that class.<sup>1</sup> The material for this study was secured from schedules filled out by 413 women, who are graduates of about forty col-

<sup>1</sup> See report on "The Economic Efficiency of College Women," by the writer of this paper, published in the *Magazine of the Association of Collegiate Alumnae*, February, 1910.

leges, and who are at present residing in almost every state in the union. It is furthermore representative in that it includes women whose homes are in large, medium and small towns, and whose experience ranges from one to forty-one years of service.

The other two studies are of women engaged in industrial and commercial pursuits. One of these is the result of a year's experience in preaching the gospel of saving to thirteen hundred women through savings bank insurance.<sup>1</sup> The women are engaged in unskilled industries such as laundering, in the semi-skilled industry of making knitted underwear, and in the skilled industry of straw-hat manufacture. Naturally in this study the cost of living is approached through a consideration of ability or inability to save. Savings should of course be included as a necessary part of living expenses, and where pay is insufficient to make saving possible, the wage received is certainly not a living wage. The general responsibility for the support of the family, whether the girl is living at home or boarding, the tendency to give all earnings to the mother, the effort to save and its success or failure—all these conditions are portrayed in this study.

The most important contribution, however, is that which comes from the research department of the Women's Educational and Industrial Union, through its fellow, Miss Louise Marion Bosworth,—a study commenced under Miss Mabel Parton, director.<sup>2</sup> This study by Miss Bosworth contains a discussion of the general economic history, the income, and the expenditures for rent, food, clothing, health, savings, and other purposes, of four hundred fifty working women, thirty of whom kept account books for Miss Bosworth for a year or more, and two hundred twenty of whom Miss Bosworth interviewed personally. One hundred fifty were interviewed by Miss Jane Barclay, a fellow of the department, and fifty by other research

<sup>1</sup> Miss Davida C. French was director of the savings bank insurance committee of the Women's Educational and Industrial Union, 1909-1910, under which this study was made.

<sup>2</sup> The results of the investigation will be published this year. Information with regard to this publication may be secured from the Women's Educational and Industrial Union, 264 Boylston St., Boston, Mass.



fellows. Miss Bosworth's study deals with three hundred fifty women living independently, and presents also the standards of one hundred living at home. The Women's Educational and Industrial Union, working for the betterment of industrial conditions among self-supporting women by both direct and indirect educational methods, has unusual opportunities for continuous study of the actual expenses and the standards of living of such women, together with the effect of those standards on their efficiency.

A study of the budgets of self-dependent women has a two-fold object: first, to enable the public to know in how far women are self-supporting; and second, to discover what income is required to make a woman self-supporting. In other words, such study should show what income is necessary for each group in order to maintain and increase its efficiency. Merely to state that a certain number actually live on a certain income is to neglect the essential question of how they live. The less educated woman cannot be expected to use the same ability in spending as her more highly trained sister; nor can the latter be satisfied with the taste of the less educated woman. The average demands of the average woman in each group must always be kept in mind.

It may be well first to present briefly the more pertinent conclusions of the study of professional women, since the general standards are more familiar to us. The expenditures reported by college women are arranged in three groups, minimum, medium and maximum. The total expenditures of the first group range from \$550 to \$725, in which an allowance of \$200 to \$350 is made for "living expenses," and \$150 to \$175 for clothing. A woman whose income is at this minimum cannot save; it represents the cost of living of an apprentice. The medium expenditures are from \$785 to \$1,075 exclusive of savings, and the maximum \$1,225 to \$1,750 exclusive of savings. The medium figures include \$300 to \$450 for living, and \$200 to \$250 for clothing; the maximum, \$500 to \$700 for living, and \$275 to \$350 for clothing.

A woman of experience voices the general opinion that the medium range of expenditure in the teaching profession today

is too low for thorough efficiency; for in such a budget no account can be made of many of the essentials of life. Thus it omits:

1. Any peculiar demands upon one's purse through obligations to one's family.
2. Expenses of the vacation season like extra board, extra laundry bills, railroad fares and extra sundries.
3. Expenses which come from social convention and social relations, such as Christmas, birthday and wedding gifts, even small ones, occasional lunching with friends, possible college class reunions, and the like.
4. Expression of one's esthetic tastes in concerts and pictures.
5. Recreation of any sort during the working year.
6. Miscellaneous trifling but accumulating expenses which are sure to occur.

At the present time 72% of the women prepared for teaching by college training are earning the medium salary or less. Grouping this class by years of experience, salaries do not reach the medium figure until a woman has been at work ten to fifteen years. If we accept these expenditures as a standard, then we find only a small proportion of college women able to attain it. The unfortunate method of determining necessary expenditure by estimate is well illustrated by the returns from these college women. The cost of actual living and clothing is often accepted as covering the essentials; but in fact the items for incidentals, carfares, professional expenses and sundries sum up to almost the same amount as the cost of sustenance, especially in the smaller budgets. Such an allowance would usually be considered excessive, but a careful review of the items indicates that this proportion of expenditure for sundries is legitimate.

In addition to this general but important conclusion that the standard of living based on the returns quoted above is too low in most cases to secure efficiency, and hence promotion and advancement, the following significant conditions must be faced by those concerned with the problem of salaries:

1. To maintain and increase efficiency and earning capacity in the teaching profession, women must be prepared to give from two to five years to graduate study.

2. Independent income ought not to be counted on to supplement earned income.

3. The relation of cost of living to efficiency should be better understood in order to lead teachers to insist upon advancement, even at sacrifice of personal preference for locality and conditions of living.

4. Although there is no prevailing standard of living, and the relation between expenditure and income or between the various phases of expenditure does not seem to be set, college women should try to set a standard as quickly as possible.

In the study of wage-earning girls made by the research department of the Women's Educational and Industrial Union, the cost of living of girls who reside with their families is considered separately. Since the aim is primarily to discover the cost of living of the self-dependent girl, the number of the other class studied is small, consisting chiefly of immigrant girls and girls in the suburbs earning a good salary and living at home or with relatives.

On the other hand, the study of the savings bank insurance committee deals very largely with girls living at home, so that the two studies supplement each other. The low contributions to the family reported by Miss Bosworth show that the girl earning three to five dollars is barely able to live, but her evidence that the higher-paid girl contributes a larger sum (about four dollars and a half a week) to the family, and supplements her payments by labor in the home indicates that she is really self-supporting, because she is living practically under a co-operative system. What she thus saves over the girl who spends five or six dollars a week for sustenance results in a higher standard of living or an opportunity to save. It is doubtless due to this lower cost of board and room while living at home that the girl who in Miss Bosworth's study does not receive a living wage is in Miss French's experience able to begin to save. Here, furthermore, is doubtless the explanation of the fact that while a girl living alone is generally not able to live on a satisfactory standard under a wage of nine dollars a week, the girl living at home, or coöperatively, begins to save on a six to nine-dollar wage.

Taking up simply the woman living alone, we find ourselves confronted with a study of factory workers, waitresses, clerks, saleswomen and kitchen workers. A standard of housing is far easier to determine than one of food. Size of room and location naturally affect rents; but it is hard to reach satisfactory conclusions concerning number of windows, sunlight, heat, bathroom accommodations, and number of roommates. Provision for food is made in the following ways:

1. Cooking in one's own room.
2. Basement dining rooms.
3. Working girls' homes.
4. Meals included for service in restaurants and hotels.

They are presented in order of excellence. "Home cooking" means serious danger to health; over-fatigue results in cold meals or no meals rather than expenditure of the energy necessary for preparation. The basement dining room serving twenty-one meals for \$3 is "invariably poor," says Miss Bosworth. Strictly speaking, the subsidized working girls' home should not be considered in a discussion of the standards of independent working girls. To calculate a "living wage" on such a basis does injustice to thousands of girls who could not if they would find accommodation in working girls' homes.

What standard, then, are these girls able to attain? Miss Bosworth says: "Between the three, four and five-dollar woman and the next higher division there is a big increase in food expenditures, corresponding to the jump in rent found at this same point. Also corresponding to the rent, the difference between the six, seven and eight-dollar group and the next higher is less marked. Either, then, the increase in wage up to eight dollars goes at once into food and rent, or as is probable, this marks the point of departure from the intolerably crowded share in a tenement dweller's home to the perhaps equally comfortless but more independent room in a lodging house. In paying the increased amount of room rent the three advantages the girl on higher wages gains are a room to herself, heat of some sort, and sunshine. These advantages come to the majority only when the wage has reached at least \$9." In securing food, the girl on the higher wage patronizes the \$4 dining rooms,

which are "so attractive in appearance, and so adequate in food as to be thoroughly satisfactory."

The subject of clothing brings at once two great problems. Here the measure of the standard of living is apparent. A girl may make sacrifices in room and board without immediate effect upon her opportunities to secure employment: but a sacrifice in dress may mean the loss of position—such is the consensus of opinion. The custom of instalment buying follows as a natural result. It is in the field of dress that the individual ability of the girl is most apparent. Innate taste, knowledge of materials, physical strength and opportunity to hunt bargains, readiness to forfeit sleep in order to get time to remodel or make clothes—all these things tell. Home and school training may help raise standards. Miss Bosworth concludes: "The average working woman, with only the average ability to manage her wardrobe economically, with the average trade demands on it, and with the average amount of time for sewing and mending, cannot dress on less than \$1 a week as a minimum, and does not need as a dress allowance more than \$2 a week." Elsewhere she states: "The severest strain of providing clothes comes on incomes under \$9; when an income of \$12 is reached, the strain is perceptibly lessened."

Apparently a satisfactory standard—one which affords a room meeting reasonable requirements, nourishing food, respectable clothing, medical attendance, and incidentals of simple type, requires a wage of not less than \$9.

I regret that the shortness of space prevents a glance at the contributions of the working girl to church, charity and the support of others, or her expenditures for self-education and recreation. Suffice it to say that the amount which goes for charity, for necessary incidentals and for education bears a creditable relation to that expended for recreation.

The savings bank insurance study is most significant in its confirmation of the inadequacy of a three to five-dollar or even a six to eight-dollar wage. Even though the girls whose records were thus secured came largely from the group living at home, it was only in the nine to twelve-dollar wage group that real savings became possible.



One scarcely dares accept the conclusion suggested by these facts, that the minimum wage should be not less than \$9, there are so many modifying circumstances. Nor dares one assert that certain sums represent the "cost of living", it is so hard to determine a standard of living. How can we fix the minimum or average of rent? How can we place a limit on expenditure for food and clothing? How can we tell how much of inefficiency is due to inadequacy of food, clothing and shelter, how much to lack of training, how much to youth? All results thus far obtained are only indicative; intensive scientific investigation and cautious interpretation are needed to establish conclusions that shall command general assent.

## A NEW SOCIAL ADJUSTMENT<sup>1</sup>

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THE entrance of women into industry means that they are going out from the home. Closely related to the new economic status of women is a new social adjustment to a larger world. I shall not attempt in this paper to go beyond the consideration of what is happening before our eyes in New York.

It is very interesting to see how much more concerned people are about growing boys in great cities than they are about girls. This is really illogical, for what is happening to girls is happening in a very special way to the race. Everyone says glibly enough that the position of woman in any society is an index of that society's civilization. This fact seems to be perceived, however, rather as some sort of bookish generalization than as a subject of social concern, which ought to be connected with a positive social purpose.

It would be idle to claim that the situation of the young girl entering industry in New York to-day is in any way socially satisfactory. It is not. There is a social—or as some prefer to call it, moral—instability at the present time that is very serious. The purity of the working girl is under a terrific strain, and it is criminal to close our eyes to the fact. Those who know this to be the case seem almost committed to a policy of silence. While they realize the gravity of the facts, they are also among the sincerest admirers and friends of the working girl, and they do not want to create the impression that there is anything inherently debased about this army of youthful women workers. It would, in fact, be a total misrepresentation to picture the working girl as in any way different from any other

<sup>1</sup> A paper presented at the meeting of the Academy of Political Science, December 4, 1909.

girl. She is, of course, the same sort of person as the society girl or the so-called middle-class girl, but her position at just this juncture is a more difficult one than that of any other young woman, for she is stepping out from the most old-fashioned type of family into the newest type of industry. This new social adjustment is just as inevitable as the economic adjustments that followed the industrial revolution.

The working girl is stepping out of the most intimate, the most mutually conscious type of family life that exists, that of humble people. This old patriarchal family has a strength and an intensive character that other families lack. Exceptions to the type in no way alter the general rule. The father is an unremitting toiler but his pleasures are centered in the home and the family. The mother is the disburser of the weekly income handed to her intact in the Saturday night envelope. Her power and influence are supreme as long as the family holds together. The children early absorb the traditional ideas of the parents undiluted by the variations presented to families of larger income where tutors, dancing instructors and music teachers share or supersede the parents' care. There is thus built up a solid structure of tradition, interdependence and loyalty with which the family life of other economic groups cannot compare. This structure, seemingly almost absolutely firm, is undergoing under modern city conditions a strain never met before, and the family is not holding its own. What cause is at work to alter the ancient type? Undoubtedly the breakup is a byproduct of the industrial revolution. Many of the old duties and opportunities of women have been taken from them. The introduction of a greater variety of diet involving less cooking, the greater simplicity in decoration involving less cleaning, the communal care of garbage, the central system of heating and lighting, the cheapness of ready-made clothing, all these changes have lessened the burden of housework and to a certain extent have freed the housewife from drudgery. The care of children is increasingly being taken over by the community with its kindergartens, its public schools, its parks, its recreation centers, its nurses and its hospitals. Thus while the woman is still the dominating figure in the home, the center

of gravity of that home so to speak has shifted; and we find the life that was once that of the home is now that of the community as well. It is the old process of differentiation from the homogeneous to the heterogeneous. It is because there is less to do at home that the children must of economic necessity find their life outside. The daughter who would once have stayed at home to help with the children now becomes the public school teacher and helps many children. The daughter who would once have made the clothes of her sister is now making the clothes of other sisters at the dressmaker's or in the factory.

The entrance of women into industry is an act of necessity. Women have in the beginning gone to work in factories and in shops and in all occupations outside the home, not from choice but because the industrial revolution has so altered the conditions of life that such a departure from the home was rendered inevitable. Woman has entered industry half-heartedly. She is not work-conscious as she is home-conscious. The old home tradition remains with her as a powerful sentiment. Her interest is the home. She expects to return to a home life of her own. Industrial work is a mere interlude. It is this work interlude that is so fraught with danger from the very fact that it is a makeshift. It is still unrelated to the deepest conscious or unconscious purpose of the girl.

When we say the New York working girl whom do we mean? We mean to a certain extent the American girl, *i. e.*, the girl who has drifted to New York from up state or from other states. Such girls are homeless here. The difficulty is not the inadequacy of home life, but its absolute lack. For these girls some substitute must be provided. But the great bulk of girls in industry in New York are not American, but Irish, Jewish, and last of all, Italian. Taken as a whole, it cannot be said that the Irish girl's entrance into industry has corrupted her as a woman. Surrounded by temptation, keenly enjoying pleasure, the Irish girl yet possesses that combination of reserve, good taste and self-possession that protects her more surely than any mere parental inhibition. But in addition to the protection of the family, she enjoys the aid of religion, which constantly in-

culcates the preservation of purity. The Irish girl is a religious girl, a devoted Catholic. Ever before her is a picture of the ideal woman, Mary the Mother of God. "Holy Mary Mother of God pray for us sinners now and in the hour of death," is said daily by thousands of Irish girls before they go to work and before they lie down to sleep. Mechanical as this may often be, it is a mental habit as strong as a physical habit. And habits serve as a prop to the will when stress comes. It would be near the truth to say that whatever the reason,—Catholic training, native chastity, an inborn sense of restraint and good taste, or all these together, Irish girls form but a small element of the group of women workers in danger of corruption.

This danger is more intimately connected with Jewish and Italian girls. The Jewish girl comes from a protected and highly developed family life. She also has been brought up in a great traditional religion as her spiritual environment. But the orthodox Jewish religion, though fundamentally social in character, is often apperceived as merely a racial custom. The Jewish ideas of the family and of religion are so intimately connected that the child who is ceasing to be held by one will not be held by the other. In this respect there is a great difference between the Catholic and the Jew. The Catholic girl thinks of her religion as greater than anything else, including the family; the Jewish girl thinks of her religion as part of her family life, to stand or fall together with it. Moreover, though in both religions man is priest—in one as head of the church and in the other as head of the family—yet in the Jewish religion there is nothing corresponding to that devotion to the Virgin which naïvely and almost hypnotically involves an unconscious idealism of womanhood. The Jewish girl also, while perhaps not personally so proud as the Irish, is in many ways more ambitious and purposive. She desires to have all that the world offers. This purposive characteristic, so noble if devoted to high ends, and so dangerous if directed to pleasure alone, is seen more evidently in the Jewish girl than in any other.

A high purpose saves. Among the prostitutes of this city, I doubt if you can find one who is either a revolutionist, a socialist, a Zionist, a good trade unionist, or an ardent suffragist.



Most of those poor girls are they who in their innocent natural desire for pleasure, unchecked by high enthusiasm for anything else, are finally dragged down to a terrible payment for the pleasures they so normally demand. Why is it that among the Jewish girls who have gone wrong we find no socialists, no revolutionists, no trade unionists? Obviously because devotion to a cause gives rise to a consuming self-respect. The compelling power of a great cause brings the same results as the sanctions of religion. A cause that becomes a passion ennobles one. Personal indulgence is obliterated and pleasure becomes identified with devotion to this cause or is incidental to it. We cannot expect that all working girls will be drawn to any of these particular causes which I have enumerated, but some spiritual interest they must have—something bigger than themselves and their own pleasures.

With the Italian girl just now beginning to enter industry in large numbers the situation again is different. Though Catholic, she seems not to have the purposive character in her religious life that marks the Irish girl. Religion is not so full of conscious meaning for her. In her home life she has thus far been and still is probably the most carefully chaperoned girl in America. From the protection of her father she goes straight to that of her husband. Never standing on her own feet, she fails to develop that independence without which as mother she loses control of her children, to their serious loss. They refuse obedience to her authority. But now at last this charming girl who has hitherto known only the controlled existence of the home is leaving it for the uncontrolled life of that larger world which she enters as industrial worker. How is she to learn to feel safe in this bigger world when her parents and her brothers do not think her so? She can never feel safe until she is safe, and she will not be safe until she learns the self-reliance and independence that come from the double security bestowed by some large spiritual enthusiasm and by economic independence. The old-fashioned girl living and working exclusively in the home was safe in a negative way. She was safe because she had no opportunity for anything but safety. This negative safety breaks down when one leaves the home. Safety in the

larger world is secured only by some positive force that enables a girl to prefer the higher to the lower. These positive safeguards are, as we have seen, of various kinds; they are religion, or socialism, or trade unionism, or any compelling form of social or political development. They all involve an individual direct relationship between the girl and her desire. She is a person with her own hopes. She is freed from entanglements. She attains a purity very different from that feeble inhibited negative thing which comes from outward protection alone.

But there is another side to this question. It is nonsense to suppose that any spiritual enthusiasm, no matter how powerful, will be adequate to protect the girl whose wage it is impossible to live on. I take it for granted that this economic aspect of the case is clear to everyone. It is silly, not to say criminal, for us to suppose that girls are going to starve or go without decent clothes or deprive themselves of all pleasures because they cannot pay their own way. There will be cases of heroism always. I think now of a poor little restaurant-worker friend of mine, who with \$4 a week with two meals a day pays for room and clothing and yet keeps straight, though with never a penny for any kind of pleasure. All honor to her, but no credit to us that we allow such strain. Thousands of girls are living in New York, on less than a living wage, not eating enough, not having proper room or clothing and yet keeping straight. But others—and these too are doubtless in the thousands—are too normal to deprive themselves of their rights in the world. Their perfectly innocent love of pleasure becomes transmuted through gradual corrupting relationships into a life of degradation. Inextricably bound together in the life of the young girl are her impulses and her ideals. Free play for both and training for both are demanded for the flowering of her womanhood. To grow, to play, to have friends, to make love, are all normal elements that go to make up the life of the young. Not only is pleasure their right but it is a racial necessity. In the old home the family life itself was the center of all the social gatherings, or if social pleasures were to be found elsewhere it was in other affiliated homes, so that in that network of home life a sort of tribal pleasure

was developed where free play to all these youthful emotions could be granted. But in the life of the great city the young girl can find little within the narrow confines of her crowded home to hold her ardent attention. In the midst of the ever-intensifying excitement with which she is surrounded she can find nothing appealing enough to attract her interest except those great congregate forms of enjoyment which center about the dance hall, the theater and the brilliant amusement resort. These commercialized pleasure places are far lighter, airier and more beautiful than any small home can be. They represent roominess, freedom, grandeur, all of which appeal to the blossoming passion of the young. There is something almost terrible in the careless way in which society both indulges and neglects the young girl. The over-stimulation of all this excitement is dangerous enough in itself but when coupled with so little that safeguards the ardor of youth it forms an appeal almost impossible of resistance. And these pleasures cannot be had for nothing. Where the girls cannot pay their cost, there are attendant circumstances which turn the natural channels of joy into debasement. The young men of the big cities today are not gallantly paying the way of these girls for nothing. Though the price may not be that which leads to despair, it often involves a lowering of the finer instinct and a gradual deterioration of the appreciation of personal purity which is one of the most beautiful flowers of civilization. The fathers and mothers of this great army of girls in industry can no longer furnish the pleasures the girls want. If then they seek them outside the home, the community itself must become the foster father and mother.

Already our communities are seeing that girls like boys must be trained for the industry which they are bound to enter. There is a pestilential group among us composed of those people who are insistent that the working classes should be taught "useful" things. All of us who live in settlements know this kind of person only too well. "Do you teach cooking? Do you teach sewing?" they ask. In these things perhaps they will take an interest, but a class for dancing or preparation for a play or an evening's sing, such persons will regard

as frills and not "useful" work. As if there were anything more useful than helping to create a social atmosphere congenial enough to hold a girl's interest! For it is from such a sympathetic background that enthusiasms spring.

Pleasures are necessary and the community must take the place of the old home by protecting the young in their pleasures and by offering them such pleasures as shall enrich rather than debase the emotional and spiritual life. Dance halls properly controlled, clean cheap theaters, amusement resorts freed from the harpies that too frequently gather there—all these are necessary in a program of social adjustment. A living wage is also essential. But beyond these the girl at work, like all women of every class, must develop a deep self-respect, a regard for herself as an industrial worker, a conviction that she is responsible for the conditions under which she works, a desire to control these conditions through such social or political means as are adequate for that end. She must not take the apologetic position, "I have to go to work," but rather the proud point of view, "As a worker I am a responsible person with a social purpose."

The woman movement has sometimes been interpreted by rich women as giving them the privilege of doing what they like and by the respectable middle class as furnishing a means of dignifying leisure. Among working women, however, it has made little headway. I say this realizing that there are thousands of whom this is not true. But the working woman in New York, as I have said, still retains the tradition of home life as her most cherished sentiment, expecting to return from industry to a home of her own. And the very beauty and power of this old ideal obscures the fact that the home of the future must be strong enough to stand all the strain to which in the nature of the case it will be subjected. To stand its ground it needs not the negative submission of dependents, but the co-operation of strong independent individuals. The new working woman's movement when under way will have within it certain sounder elements than the movement among middle-class and wealthy women. For in industry one learns promptness, order and adaptation to ends—in other words, efficiency. Bringing

back this business sense into the home and enlarging it by those spiritual enthusiasms which give a sense of roominess and freedom, no matter what one's daily task may be, the working woman, when once this new social adjustment has been made, will be a new kind of new woman in whose consciousness the destinies of home, industry and society will be seen as fused into one. Her duties toward society and toward the home will be seen to be indissolubly connected. And when her children are born she will see to it that the old negative protection of the home shall be supplemented by the positive elements of protection, the chief of which is the flame of a positive enthusiasm. But this desirable end, this real social adjustment, will not take place unless society is prepared to adopt a practical program embodying these three elements—proper opportunities for pleasure, a living wage and the cultivation of independence, self-respect and idealism.



## MARRIED WOMEN IN INDUSTRY

FLORENCE KELLEY

General Secretary, National Consumers' League

**T**HROUGHOUT all history married women have carried on productive industry, feeding and clothing the race. And in that coöperative commonwealth which some of us hope to see, they will undoubtedly again participate largely and beneficently in the industrial work of the community.

It is perfectly easy to conceive of a prosperous village in New England or the state of Washington, with coöperative intensive culture of gardens and orchards, with coöperative dairy, laundry, bakery, store and workshops. In such a village the high school might well have as its adjunct a nursery where the oldest girls could learn the art of caring for babies and little children, as the normal school of today has its kindergarten and primary classes for the benefit alike of the children and the teachers in training. The citizens of such a village would obviously be highly enlightened folk, and might be expected to limit their working day to four, five, or six hours. Given these easily conceivable conditions, the industrial work of mothers of children as young as one year might perhaps be an asset for every one concerned.

It is, indeed, one serious charge in the indictment against the present competitive organization of industry that the industrial employment of married women to-day does harm and only harm. With the increasing industrial work of married women in our competitive industry comes increase in the number of children who are never born. In industrial centers, the world over, wherever records are kept, the decreasing birth rate manifests itself. Where this is due to drugs or surgery it is of the gravest social significance. Childless working wives are a permanently demoralizing influence for husbands. If these are inclined to idleness they can idle the more because the wives work. However disposed to hard work the men may be, the presence in the market of a throng of unorganized and irregular

workers (and married women are both more unorganized and more irregular than others) presses upon the wage rate of men. Whether the wife leaves home to work in cotton mill or laundry, or whether she stays at home working under the sweating system, she suffers the disadvantage of carrying the double burden and enduring the twofold strain of home maker and wage earner. And she presses upon the wage scale of her competitors as the subsidized or presumably subsidized worker must always do.

Aside from childless wives, married women wage earners consist of deserted mothers, widowed mothers and women who have both children and husband. All these are ordinarily subsidized workers, the deserted and widowed receiving charitable relief, and the women with husbands having, at least in the theory which underlies their wages, some support from them.

The heaviest strain of all falls upon the wife who has husband and children and is still herself a wage earner; for she has usually child-bearing as well as wage-earning duties. Even where her wage earning is due to the husband's tuberculosis, or epilepsy, or other disability, this does not ordinarily end the growth in number of mouths for which the industrially working mother attempts to provide.

Here and there, even in the great cities, an exceptional woman may be found who has endured to middle life, or even longer, this double strain, and has brought up children creditable in every way. Such rare women are usually immigrants of peasant stock, fresh from rural life in the old country, and merely serve, exceptions as they are, to prove the rule.

Whether the wage-earning mother leaves home, or brings her work into the home, her children pay the penalty. If she is away, they are upon the street or locked into their rooms. From the street to the court is but a short step. From the locked room to the grave has been for unknown thousands of children a step almost as short, many having been burned and others reduced by the long intervals between feedings to that exhaustion in which any disease is fatal. Most dangerous of all to the young victims of their mothers' absence, are the unskilled ministrations of older sisters, those hapless little girls

ironically known as "little mothers." These keep neither the babies nor the nursing bottles clean; nor do they keep the milk cool and shielded from flies. They have no regular hours for feeding or naps. They let the baby fall, or tumble down stairs with it. And in all the cruel process their own backs grow crooked and they are robbed of school life and of the care-free hours of play. Even where the mother does her industrial work at home, the older girl suffers from the delegated care of the younger children, and there is a strong tendency for the dwelling to be dirty and neglected, and for all the children to be pressed into service at the earliest possible moment, at cost of school attendance and of play.

Homework, which is peculiarly the domain of married women, forces rents up, because the worker must be near the factory. This promotes congestion of population, to the advantage of no one but the landowner.

Even the employer is injured by the presence in the market of a body of homeworking women. By their cheapness he is tempted to defer installing the newest machines and most up-to-date methods. Enlightened employers who do make such provision have competing against them the parasite employers who drag out an incompetent existence because they can extort from their homeworking employes the contribution to their running expenses of rent, heat, light and cleaning.

In the employment of married women, as in all other industrial evils, it is ultimately the whole community which pays. Whether the children die before or after birth, the moral tone of the population suffers and hearts are hardened by acquiescence in cruelty and law breaking. Whether the surviving children (by reason of their mother's absence or her neglect in her overwrought and harassed presence) become invalids or criminals, they do not suffer without sending in their bill to the community which tolerates their sufferings. In the growth of vice, crime and inefficiency, and in the spread of communicable disease, consciously or unconsciously, the whole community pays its bill to the children whom it has deprived of their mothers.

In this country we do not know the number of wage-earning mothers either at home or elsewhere. Our records, official and

unofficial, are as defective in this regard as in all others. We cherish a general impression, as pleasing as it is erroneous, that the old usage persists under which, in the early days of the republic, the father commonly maintained his family until the children had had some share of school life, and thereafter father and children supported the mother.

In the textile and needle trades, however, even this tradition never prevailed, and of late a contingent of the washerwomen of yore seem to have moved bodily into the steam laundries of today.

Now cities which are centers of the textile industry are, and for sixty years notoriously have been, the centers also of the labor of women and children, of infant mortality, tuberculosis, immorality and drink. This was the thesis of Friedrich Engels' volume on *The Condition of the Working Class in England in 1844*. Even today in Saxon Chemnitz and in New England Fall River, wage-earning mothers away from their homes and children are a characteristic and sorrowful feature of the dominant local industry.

A perverse element in the problem, which would be humorous if it were not tragic, is the encouragement persistently given by philanthropists to the wage-earning labor of married women. Day nurseries, charity kindergartens, charity sewing rooms, doles of home sewing, cash relief contingent upon the recipient's taking whatever work she may be offered, are all still in vogue in the year 1910.

The monstrous idea has been seriously advocated (without editorial denunciation) in the columns of *Charities* that a night nursery might enable women to work at night after they have cared for their children by day! A shameful spectacle visible every night in our cities is the army of widowed mothers on their knees scrubbing the floors of railway stations, stores and office buildings. This noxious task is sacred to them because the work is so ill paid and so loathsome that men will not do it. The opportunity to enlist in this pitiable cohort of night toilers is commonly obtained for the widowed mothers by their influential philanthropic friends.

And in all these cases the obvious fact is overlooked that

such charitable effort is inevitably self-defeating. Overworked mothers, like other overworked human beings, break down and are added to that burden of the dependent sick which society perpetually creates for itself.

We have preferred to live in a fool's paradise, ignoring the social implications of our stupendous industrial development. We have, therefore, adopted only one of all the palliatives with which other industrial nations have been experimenting during the past sixty years.

In our textile manufacturing states the men (though a minority of employes in the industry) have succeeded in so bringing to bear their trade organizations and their votes as to obtain legal restrictions upon the working hours of women in industry. For married women the net result of this palliative measure has, however, proved largely illusory. Every shortening of the working day tends to be followed by speeding up of the machinery to keep the output as large as before, or by a cut in wages due to reduced output if no change is made in the speed. Now married women, particularly when mothers of young children, are inevitably the least organized and self-defending part of the adult working class. And they have, in fact, suffered both speeding up and the worst rates of wages in their branches of industry. Thus the numbers of married women enabled to continue in industrial employment without breaking down have not necessarily been greatly increased by our one attempt at legislation in behalf of their health.

Because we have never observed, or recorded the facts in relation to the industrial work of married women we have no statutory provision for rest before and after confinement, yet many textile manufacturing communities have their body of knowledge (common and appalling knowledge) of children born in the mill, or of mothers returning to looms or spinning frames when their babies are but three or four days old.

Those industrial nations which scorn the fool's paradise gather the facts, face the truth, and act upon it. Thus Bavaria, which accepts as inevitable the factory work of mothers of young children, began in 1908 to encourage employers to establish nurseries in the mills and permit mothers to go to them at regular



intervals. The government voted 50,000 marks for payment to physicians and nurses who supervise the nurseries. The avowed object of these institutions is to reduce the disease which has ravaged bottle-fed babies left to the care of neighbors and of older brothers and sisters. In Italy, also, for several years employers have been constrained by law to give to mothers regular intervals for nursing their babies.

Fourteen nations of Europe, and the state of Massachusetts, have abolished night work by women in manufacture. This is obviously a boon to working mothers.

For the protection alike of the community and the workers, England, Germany, Austria and New York state have all been vainly striving for twenty years to devise legislation which would minimize the evils attending homework, yet would not abolish it. During this effort the tenement houses licensed for homework in New York City alone have reached the appalling number of twelve thousand.

In England a long agitation has resulted in the enactment of the trade boards law, in force since January 1st, 1910, providing for the creation of minimum wage boards and the establishment of minimum wage scales. How effective this may prove time alone can tell.

Several lines of action are clearly desirable and possible:

1. There must be a body of knowledge which we do not yet possess as to the number of married women at work and the industries which employ them, and this must be kept up to date from year to year. Why have the federal and state bureaus of labor statistics hitherto neglected this inquiry?
2. Such laws as are already in force against deserting husbands and fathers can be more rigorously enforced than is common at present, and their scope can be widened.
3. Orphans and widowed mothers of young children can be pensioned and removed from the labor market. This is the most useful palliative yet attempted.
4. The lives and working careers of husbands and fathers can be prolonged by prevention of accidents and disease. Effort in a large way to this end is only now beginning.
5. Those legislative measures which make work more endur-

able for all women (such as the obligatory provision of seats) can be promoted with especial reference to the urgent needs of married women.

6. A campaign of education among philanthropists can be carried on to induce them to cease from their cruelty to widows and deserted wives, and to lead them to imagine how any one of themselves would feel if she had to work all day in a mill or factory or laundry and then gather her babies from the day nursery for the night.

7. Public opinion can be created in favor of a minimum wage sufficient to enable fathers to support their families without help from wage-earning wives.

8. Finally, effort to substitute coöperative work for competitive work can be promoted. And herein lies the ultimate solution of the problem of married women's industrial employment. For it is only in the coöperative commonwealth that they can find just and beneficent conditions in which to carry on those industries which were theirs from the foundation of human life.

## THE ECONOMICS OF "EQUAL PAY FOR EQUAL WORK" IN THE SCHOOLS OF NEW YORK CITY

JOHN MARTIN

Board of Education, New York City

**F**OR some time the Interborough Association of Women Teachers in New York City has conducted a vigorous agitation under the banner "Equal pay for equal work". This motto has won wide acceptance. Taken literally "Equal pay for equal work" is self-evidently just and reasonable, and persons or governing bodies who oppose it are put on the defensive. But in connection with the schools the phrase is not to be taken literally.

It is a factory phrase. For manual workers equal pay for equal work is embodied in the piece-work system, a system generally preferred when the work is of a routine character and when the output of each worker under exactly the same conditions can be measured with precision. A fixed piece price is paid for spinning a yard of cotton, for cutting a dozen coats, for rolling a ton of steel, for making a gross of paper boxes, for stitching a score of shirtwaists. Though in fact men and women rarely perform the same process, even when they work in the same factory, yet the pay per unit is fixed regardless of the age, sex, color, or competence of the worker. There is equal pay for equal work. Superior skill means superior speed and increased output, and pay is proportioned simply to output.

But nobody has ever found a satisfactory way to measure the output of a teacher. In England one way has been tried. In the early seventies, when the public schools were made in part an imperial charge, the manufacturers, who were dominant in Parliament, were anxious lest the imperial grants should be so awarded as to encourage laziness among teachers. Somebody hit on the phrase, "Payment by results." That settled the matter. The phrase caught the fancy of men who ran woolen mills and iron works, men who wanted some rule of thumb by

which to measure whether the nation was getting what it paid for. So every year an imperial inspector visited the schools and put to each boy and girl a test in reading, writing, arithmetic, and so on. The exact number of sums worked without mistake, and of misspelt words in the dictation exercises, the precise number of errors each youngster made in reading—all were written down, and the money paid by the government to help that school was proportioned to those returns.

Sometimes a teacher's salary consisted of the grants so obtained; always the teacher's professional standing and promotion were determined by these miscalled "results." In consequence the teacher who was most cruel, who kept children late in school, who sacrificed most relentlessly the finer parts of education, who drove the helpless youngsters at the bayonet's point, as it were, who wasted no precious moments in merely training the faculties—that teacher got the most money and the most rapid advancement. To their honor be it said that the teachers of England for decades combated the hideous system. At last they convinced legislators that the growth of a child's mind, the emanations of a teacher's spirit, cannot be measured by yard stick or quart pot, and the system of "payment by results" was relegated to museums of instruments of torture.

America has been free from any factory method of attempting to gauge the teacher's work. Nobody has ever seriously proposed to establish piecework in schools and so give equal pay for equal work. The battle cry, like most political catchwords, is inexact and misleading. The Interborough Association means by the "equal pay" principle the merging of the salary schedules where the schedules now distinguish between men and women, so that, whatever other differences of qualification the schedules take into account, they shall ignore differences of sex in the teachers.

To determine the economic and pedagogical results which would flow from the adoption of this principle it is necessary to examine first the system upon which the existing schedules are constructed. Why are thirty-one complicated schedules, which group teachers by a variety of standards, adopted at all? Why is not each teacher judged individually? Because, in New

York, where the army of teachers, instructors, directors, principals and superintendents numbers 17,073, individual treatment is physically impossible, and, if it were tried, the schools would be permeated with politics. Perforce the army is divided into a few groups and the members of the same group are paid upon principles which ignore their individual differences of quality.

In constructing salary schedules what elements are taken into account? A number can be detected, of which the chief are: 1. A living wage. 2. Years of experience or age. 3. Length and quality of preparation for the work. 4. Responsibility of the duty performed. 5. Total demand upon the taxpayer which the schedules entail and willingness of the taxpayer to meet the demand. 6. Adjustment over a long period of the supply of teachers to the demand.

Consider these elements separately.

1. A teacher is expected from the first month of work to be self-supporting and to live in a manner befitting the dignity of the profession. Not simply a bare subsistence, but refined recreation and continued culture as well as freedom from economic anxiety about the future are essential to the discharge of the teacher's high duties. On what sum can a young person in New York secure these advantages? That sum must fix the minimum paid even though stark necessity would force sufficient unfortunates to accept less, temporarily, if less were offered. For some years the New York minimum has been \$600 for the first year, an amount, as I shall show later, admitted to be inadequate at present.

2. Normally, by added experience, a teacher for several years becomes more valuable year by year. Therefore an annual increase of salary is granted automatically, falling like the rain upon the just and the unjust, except that the eighth and thirteenth increments are given only upon satisfactory reports of the teacher's work. In practice the increment is hardly ever withheld. But no attempt is made to determine at what age a teacher reaches maximum efficiency. Maximum salary for grade work in the elementary schools is reached by women in 16 years and by men in 12 years, not because the men reach their maximum efficiency more rapidly than women, but be-



cause a more rapid advance to their highest salary has been judged necessary to hold them in the profession. Probably most men and women are as efficient after five or six years' service as they ever become for grade work.

3. A minimum qualification of scholarship, character and experience is set for all teachers, but the minimum for a teacher of the graduating class in the elementary schools is higher than for the lower grades and for the high schools higher than for the graduating class. Therefore the salaries for these upper positions are also higher.

Even if additional academic preparation be not requisite for teaching higher grades, it is desirable to have some "plums" in the schools, that can be given to the pick of the staff for encouragement. Some breaks in the monotony of equal pay for equal age stimulate a body of workers to do their best in competition for the "plums." Therefore extra emoluments have been given to teachers of the seventh and eight years.

4. Further, the greater the responsibility the higher the pay. Principals are paid more than class teachers, superintendents more than principals.

5. Schedules must be so adjusted as not to make upon the taxpayer a larger gross demand than he will honor. Quite properly the cost of education mounts ever higher; but, in any year, there is a maximum which the taxpayer will allow without rebellion, a highest measure compounded of his ability to pay, the value he sets upon education and the influence of the most enlightened citizens upon him. Presumably if teachers were paid the salaries of ambassadors the highest talent in the country would be attracted to the profession. But ambassadorial emoluments, however desirable they might be both for the nation and for the teachers, are practically unattainable. Taxpayers will not adopt, thus far, Froebel's injunction: "Let us live for our children."

6. Over a long period the supply of teachers of requisite quality should equal the demand, and salaries that will attract the supply must be paid. What is the requisite quality? There's the rub. Examinations tell only part of the truth; college training cannot make "silk purses out of sows' ears." Only

roughly can the expert superintendent tell whether the quality among ten thousand teachers is as good today as it was ten years ago. Teaching is an art for which the elusive quality of personality—the product of heredity, early surroundings, home influences, native gifts—is as essential as for painting. Of two painters who have had precisely the same masters and the same experience, one may produce masterpieces fit for an imperial gallery and the other daubs fit for a saloon; just so of two teachers of equal academic training, one may radiate noble, the other ignoble influences. Who shall measure the personality of the teacher or compass the growth of the pupil's intelligence? No radiometer can register the emanations of a teacher's spirit, no X-rays expose the buddings of a child's mind.

When the refined daughters of Massachusetts left the cotton mills of Lowell and their places were supplied by peasant immigrants who could not read the "Lowell Offering" which their predecessors published, the quality of the cotton sheeting did not deteriorate, because the character of the operator is not embodied in cotton goods. But, should the same change occur among teachers, the quality of the children at graduation would inevitably run down; for the teacher's spirit, partly reproduced in the children, is the most precious element of their education. Therefore, no requirement for the schools is more sternly peremptory than that salaries for teachers shall be sufficient to attract a high quality of persons.

At this point we encounter the central claim of the Interborough Association of Women Teachers. For reasons over which the educational authorities have no control men teachers of as high a personal quality as women teachers cannot, over a long period, be secured and held for the same pay. That fact is demonstrated by the present experience of the high schools.

After extended investigation Mr. Frederick H. Paine says:

The board of education appointed during the period September 1909 to February 1910, 100 men, of whom 22 refused appointment, leaving a total of 78 places filled, while 116 vacancies still exist.

The eligible list now contains 61 names, of all classes, who will accept appointment, but, as experience shows, a large proportion will not

be available by the time appointment here is offered them. Examinations for license have been held frequently. The last examination, held in November, 1909, added but sixty-four men to the lists, a totally insufficient supply.

Substitutes, an inexperienced teaching force, must be used in boys' schools, and only women can be appointed to mixed high schools.

An inquiry of the deans of various New England and New York colleges shows that the number of graduates of those institutions who enter the teaching profession has greatly diminished within ten years. At Yale University the decrease is from 12 per cent to less than 2 per cent.

On the average, private schools pay higher salaries to men than the public high schools, although paying lower salaries than do the public high schools to women, and, accordingly, women are more attracted to the public high schools.

It is plain, therefore, that more is involved in the request of the Interborough Association than the removal of artificial, irritating distinctions. The recognition of the element of supply and demand involves the recognition of sex among teachers.

Before examining the effects, economic and pedagogic, which would follow upon the adoption of the suggestions of the organized women teachers it must be reiterated that salary schedules, in point of fact, are not and cannot be constructed in conformity to any abstract principle. They are necessarily a resultant of many forces, the best solution of a vexing problem by the authorities, after due consideration of all the factors. Salaries are settled by the pragmatic method. Whatever schedules work out best in practice, not so much for the teachers as for the children, those schedules are most "just," most "moral," most in harmony with the will of the universe.

That the Interborough Association found the problem insoluble upon ideal principles is shown by the latest schedules which they themselves have presented for adoption. These schedules maintain all but one of the elements which appear in the existing schedules; and, even that one, sex, is acknowledged by the provision that teachers of boys' classes shall receive \$180 a year more than teachers of girls' classes. This acknowledgment strips their contention of that moral quality with which some have endowed it. "A new commandment I give

unto you, that you pay men and women of the same age the same salary" has been presented as the twentieth century addition to the decalogue. But if the priestesses who announce this amendment to the moral law themselves assert that it is harder to teach boys than girls, perhaps educational authorities are not altogether wicked when they acknowledge that it is harder to secure boys than girls as teachers, when they grow up.

Neither do the schedules proposed by the Interborough Association, any more than the official schedules, "provide but one salary for one and the same position." On the contrary, under them any position between the kindergarten and the seventh grade may be filled by teachers with salaries varying from \$720 to \$1,515. One teacher of the graduating class may receive less than a thousand dollars (the scales are not definite enough to show the exact minimum), another \$2,400. Positions in high schools of exactly the same character and difficulty may be filled by assistant teachers at salaries varying from \$1,300 to \$2,400. The only positions for which the schedules of the Interborough Association "provide but one salary for one and the same position" are the city superintendent of schools, the associate city superintendents, the members of the board of examiners and some directors of special branches.

If the principle of the same salary schedules for men and for women were mandatory, either the women's salaries might be raised or the men's salaries reduced. Either process would have palpable consequences, economic and pedagogic. Consider the results of each method separately.

1. To equalize the salaries of all women who were teaching in the same grades as men, with those of the men employed in such grades, in May 1909, would have entailed a cost that year of \$7,837,662. But since that date men who were teaching in grades below the sixth have been transferred, so that today, it is estimated, the cost would be below seven million dollars per annum. A large part of that increase would be of the nature of a "bonus" to the women, a bonus, say some legislators, no more justifiable than would be an extra price paid for goods by city officers to women because they were charming.

If the board of education, when appointing new teachers,

would save no money by appointing women in preference to men, it is certain that the proportion of men appointed, supposing the rates of pay were high enough to attract men at all, would be much increased. Men would drive out women, just as women when they were cheaper have driven out men. Most authorities would agree that such a result would be beneficial to the schools, which sadly need more men; and some approve the dogma of "equal pay" because they desire such a result. The same result could be won at much less cost if the board of education determined to ignore the savings to be made by appointing women and, for the sake of keeping the virile elements in the school, should appoint under its own schedules the dearer men.

2. If the salaries of men were reduced so as to conform to the salaries of women the effects would be considerable.

The cost for teachers would decrease by an amount which nobody has cared to waste labor in estimating, because nobody imagines that either the authorities or the men teachers would permit that experiment and the women teachers would be no more content than anybody else to see it tried. Naturally they do not wish the "equal pay" principle to be applied in a way to put no more money into their pockets. Primarily and properly they seek higher salaries; they would burn no incense to a dogma which promised them no increase.

The pedagogical results of lowering the schedules for men would be disastrous, for, unless the standard of quality in candidates were shamefully lowered, new men would not enter the system and the little band of 2,099 men teachers who now add the male influence to the female influence of their 14,974 women colleagues would fast diminish and soon approach extinction. Then the schools would be entirely feminized, an outcome so bad that even enthusiasts for economy hardly dare openly advocate reducing the men's pay.

Is the agitation of the women teachers, then, altogether unjustifiable and doomed to be fruitless? Not at all. Already it has had two good effects.

1. It has called public attention to what Governor Hughes styled "glaring inequalities" in the salary schedules. Since the



schedules embody the judgment of their builders on a variety of elements, some of them, such as "personality", quite impalpable, none of them measurable with instruments of precision, the schedules can never satisfy every critic. Always the critic's judgment of the relative values of academic scholarship, experience, technical skill and so on, may differ from the judgment of the authorities. However, the women teachers have convinced the board of education that the existing differentials between men and women are generally too heavy. For example, of the teachers in elementary schools women start at \$600 a year and by yearly increments of \$40 go up to \$1,240 and men start at \$900 a year and by yearly increments of \$105 go up to \$2,150. That difference is not demanded by the circumstances.

But the differences between salaries of teachers of different ages, which are conspicuous in the schedules framed by the Interborough Association, are equally flagrant and open to attack. In fact any schedules which assume that teachers of different ages who are doing analagous work should receive pay for their years as well as for their effort are vulnerable to a logician's spear.

One teacher of two years' experience may possibly do better than another twelve years her senior. The younger may have the divine gift of teaching which comes only by nature; the older be a mere drudge, a hewer of wood and a drawer of water. Yet the older, under the schedules of the Interborough Association, would continue to receive a much higher salary than the younger. That may be proper, and is certainly unavoidable, but it mocks at logic and at "equal pay for equal work."

In a large system like New York's there is always here and there an old teacher, who though getting the maximum salary, is well known to be doing the feeblest work. The logic of equal pay for equal work would require that the salary of such a veteran be pared down to the bone as is done in manual industries, where, under the piece-work system, no account is taken of the age of the worker, but relentlessly the older man or woman is challenged to keep the pace of colleagues in their prime. When sorrow, sickness or old age weakens the powers nobody proposes to increase the rates to make up for lessening speed, but the worn-out worker is thrown aside.

More humanely and with higher logic the worn-out teacher in New York is retired upon a pension. It is known that old age gradually brings weariness and ossification, and the veteran, whose strength has been sucked by successive generations of youngsters, must yield the leadership, for the good of the service, to the younger generation that, in Ibsen's phrase, is "knocking at the door". One year the veteran is assumed to be worth the highest salary; the next year she is pensioned off, as if from one week to the next her efficiency had dropped from maximum near to minimum. Actually the powers may have been declining for some years before the teacher's withdrawal and the strict logician would object, therefore, to the size of the salary received. But abstract logic is no guide. Teachers must be paid and pensioned on pragmatic principles; whatever system works out best for the schools is most desirable.

2. The agitation of the Interborough Association has forced part of the public to admit the need for a general increase of teachers' salaries, an increase which shall be so distributed as to minimize the inequalities. After the legislature in 1907 had passed a law embodying the women teachers' demands and re-passed it over the veto of Mayor McClellan, Governor Hughes in turn vetoed it, but showed that he thought the schedules should be revised. In 1907 and again in 1908 a special committee of the board of education, after careful deliberation, recommended tentative new schedules, which were approved by the board. In 1908 and in 1909 the board included in the budget as presented to the board of estimate and apportionment requests for appropriations which would enable it to put the amended schedules into effect. Its request was denied.

Altogether the proposed schedules would entail salary increases for 1910 aggregating \$2,639,762 to 14,751 women and aggregating \$206,215 to 582 men, a total increment, for the first year of operation, of \$2,845,977. Of all the men educators the salaries of 28 per cent would be raised. Of all the women educators the salaries of 98 per cent would be raised. The mass of the women teachers would have their salaries raised about twenty per cent.

This schedule, like all others, is vulnerable at points. Kinder-

garten teachers will complain because they are treated less generously than grade teachers, for hitherto they have been under the same schedule. But kindergartners have recently glutted the market and one way to persuade them to prepare for other work, where they are more needed, is to make their increases smaller.

The Interborough Association of Women Teachers criticizes the proposed schedules. The salaries of male teachers should not be raised, says the Association, "because these men are already receiving higher salaries than women occupying the same position."

Since no men are employed in the lower five grades, the so-called principle does not affect the majority of the women teachers, those who teach these grades. The board, recognizing that their salaries are inadequate, proposes to enlarge the salaries generously. But the Interborough Association says in effect: "We will not approve an addition of \$2,639,762 to the salaries of women, because at the same time you add \$206,215 to the salaries of men. We demand that the women who, being in the majority and now receiving the smallest salaries, will receive under the board's schedules all the increases which they expect, shall forego these increases until the board approves further increases, exclusively for the better-paid women teachers, aggregating another three or four million dollars."

So long as the majority of the women teachers, those in the lower grades, by their silence approve the assumption that they desire to sacrifice some two million dollars a year for the sake of the abstract doctrine which their richer sisters propound, so long the board of estimate, always vigilantly watched by the organized tax payers, will have a good excuse for keeping things as they are. Why should any guardians of the public purse incur the dislike of tax payers for the sake of teachers who show no eagerness for the attainable and promise neither gratitude nor contentment? The policy of all or nothing is heroic, but unbusinesslike.

Should the teachers, men and women in harmony, unite with the board of education in a campaign of enlightenment in favor of the tentative schedules, perhaps amended in spots, they

might convince the tax payers that the proposed increases are necessary for the following reasons :

1. The cost of living has notoriously increased since the present schedules were established, increased by at least the fifteen to twenty per cent by which the new schedules would increase most salaries. Therefore, in reality, the teachers who secure increases would be getting no higher "purchasing power" than the old schedules were meant to give them. The 1500 men whose salaries would be unaltered, are peacefully accepting a reduced purchasing power.

2. While at one time teaching was the most desirable work open to well-educated women in large numbers, the occupations now open to them are happily increasing. The schools must now compete with commerce, law, medicine, literature and journalism, for women of the best type. Unless the schools offer a career as lucrative as the office, the bar and the desk, the quality of women entering the teaching profession will deteriorate and the children suffer.

3. For men and women of the same ability the standard of living, in all classes, is rising. Each year the nation, and especially New York City, grows richer, luxuries become comforts and comforts necessities. Everybody, from immigrant to millionaire, expects to live better today than he did two or three decades ago. Houses, food, clothing, holidays, culture, travel—the son demands all of better quality than satisfied the father. Teachers should share this general rise in the standard of living, or their profession will lose caste, and the rising generation will lose the influence of teachers who command public respect.

A survey of the whole situation, then, indicates that the cry, "Equal pay for equal work" is as misleading to the teachers, who understand its import, as to the casual hearer, who takes it literally. In the latter it arouses false ideas; in the former false hopes. Like a will o' the wisp it lures into a morass. Only those who, ignoring its gleam and earnest to make whatever advance is practicable, march steadily along the beaten highway, each year come nearer their goal.

## WOMEN AND THE TRADE-UNION MOVEMENT IN THE UNITED STATES

ALICE HENRY

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THE story of woman in the labor movement has yet to be written. In its completeness no one knows the story, and those who know sections of it most intimately are too busy living their own parts in that story to be able to pause long enough to play at being its chroniclers. For to be part of a movement is more absorbing than to write about it. Whom then shall we ask? To whom shall we turn for even an imperfect knowledge of the story, at once great and sordid, tragic and commonplace, of woman's side of the labor movement? To whom, you would say, but the worker herself? And where does the worker speak with such clearness, such unfaltering steadiness, as through her union, the organization of her trade?

In the industrial maze the individual worker cannot interpret her own life story from her knowledge of the little patch of life which is all her hurried fingers ever touch. Only an organization can be the interpreter here. Fortunately for the student the organization can act as interpreter, both for the organized women who have been drawn into the labor movement and for those less fortunate who are struggling on single-handed. Organized and unorganized workers almost always come into pretty close relations in one way and another. Besides, the movement in its modern developments is still so young among us that there is scarcely a woman worker in the organizations who has not begun her trade life as an unorganized toiler.

Speaking broadly, the points upon which the trade-union movement concentrates are the raising of wages, the shortening of hours, the diminution of seasonal work, the abolition or reduction of piece work, with its resultant of speeding-up, the maintaining of sanitary conditions, the enforcement of laws against child labor and other industrial abuses, the abolition of

taxes for power, thread and needles, and of unfair fines for petty or unproved offenses. A single case taken from a non-union trade must serve to suggest the conditions that make organization a necessity. Seventeen years ago in the bag and hemp factories of St. Louis, girl experts turned out 460 yards of material in a twelve-hour day, the pay being 24 cents per bolt (of from 60 to 66 yards). These girls earned \$1.84 per day (on the 60-yard bolt). Now a girl cannot hold her job under a thousand yards in a ten-hour day. The fastest possible worker can turn out only 1200 yards, and the price has dropped to 15 cents per 100 yards as against the old rate of 24 cents per bolt of from 60 to 66 yards. The workers have to fill the shuttle every two or three minutes, so that the strain of vigilance is never relaxed. One year is spent in learning the trade, and operators last only three years after that.

How successful organization has been is well shown by numerous examples. In the instances which follow, taken from the convention handbook of the National Woman's Trade Union League, the advantages gained in some of the trades apply to all establishments working under agreement with any and every local union of the national organization. In other cases the diminution of hours, the increase of wages and the improvement of conditions are limited to the factories or shops in certain cities only. Even bearing this qualification in mind, these gains, following in the train of collective bargaining, are sufficiently impressive.

#### SEWING TRADES

In the sewing trades there are many sub-divisions, including such varied groups of workers as these: home finishers, coat makers, pants makers, vest makers, shirt, collar and cuff makers, overall makers, white goods workers, corset makers, shirtwaist makers, skirt makers, cloak and suit tailors, button-hole makers, lace makers and embroiderers. All employed in these occupations can belong to one of the two great national unions, the United Garment Workers of America and the International Ladies' Garment Workers. Wherever these unions control the trade they have abolished child labor, have established the eight-hour day and in some cities the forty-four-hour



week, have insisted upon sanitary conditions, and have obtained time and a half in wages for overtime work. The general wage has been increased over fifty %.

#### GLOVE WORKERS

In this trade the union has abolished the practice of compelling a girl to pay for her sewing machine (perhaps \$60 for a \$35 machine) or else to rent it at 50 cents a week. Under non-union conditions she has to buy her own needles and oil, pay 40 cents a week for power, and stand the cost of all breakages. The organization has abolished all these causes of complaint, has reduced hours from twelve to nine and eight and a half, and has established a Saturday half holiday. This union has been very successful in eliminating the pacemaker as a factor in controlling the price of piece work, for the price is now determined by the speed of the average worker, not the fastest one.

#### BOOT AND SHOE WORKERS

Here the union has increased wages by 40 %. Unionized women shoe workers are entitled when sick to \$5 a week benefit for thirteen weeks in one year. There is also a death benefit of \$50, after six months' membership, and \$100 after a two years' membership. All members are entitled to \$4 a week strike pay.

#### LAUNDRY WORKERS

In one city organization has reduced the hours of work from eighteen and twelve (in the rush season) to nine, and has increased wages 50 %. In another city the union has reduced the hours of work from eighteen and twelve to nine, and has increased wages from \$15 a month to \$9 a week minimum and \$15 a week average.

#### BEER BOTTLERS

The work done by women and girls in breweries involves standing all day. If they are washers they cannot keep themselves dry, and in winter the open doors keep the great bottling rooms very cold. Broken glass and exploding bottles are constantly injuring the faces and cutting the hands of both washers and labelers. In Chicago organization has reduced the hours

from nine to eight. The wages run from \$3.50 to \$5.50 in non-unionized establishments. In one city where the girls are unionized they are paid \$7.20 a week and overtime at the rate of time and a half. Among men this is a highly unionized trade; consequently girls ought everywhere to have the protection of a common organization.

#### CIGAR MAKERS

There is a great contrast between union factories and some non-union establishments. The union has successfully insisted upon good ventilation, clean floors, walls and toilets, clean paste in little individual jars (to fasten the ends of the cigars), an eight-hour day and no child labor. Among all cigar makers the death rate from tuberculosis is 61 % of all deaths, according to government statistics. Among union cigar makers according to the last obtainable report (1905) the tuberculosis death rate was only 24 %.

#### ELECTRICAL WORKERS

The electrical workers' trade is one into which women are coming in increasing numbers because, as one foreman said, they receive 40 % less wages than men and do 25 % more work. This trade is a long way yet from the ideal of equal pay for equal work, but the union established for the girls a minimum wage scale of \$5 a week at the very first, and last year this was increased to \$6. Hours have been cut from ten a day to eight and a half on five days of the week and four and a half on Saturday.

#### BINDERY WOMEN

It would be vain for an individual girl to go to the foreman or the manager in a bindery and refuse to use bronze powder for lettering because it is deadly to the lungs, or to explain that for a girl to work on a numbering machine with her foot at the rate of 25,000 impressions a day is dangerous to her health. But this is just what the locals of bindery women through their delegates are explaining to employers the country over, and employers are heeding them. These organized girls have an eight-hour day and wages have increased by 35 and even 50 %. Sick members get a \$3 benefit for thirteen weeks, and at death a benefit of \$50 is paid.

## TEACHERS

The teachers of Chicago in the year 1902 could look forward to a maximum salary in the primary grades of \$800, in the grammar grades of \$825. The efforts of their organization, the Teachers' Federation, have raised the maximum salary in the primary grades to \$1,075 and in the grammar grades to \$1,100, an increase of \$275. The money to meet this additional expense has been found for the board of education through the successful tax suit promoted by the Teachers' Federation itself. Teachers' pensions are now on a solid basis. The pension fund is supported by contributions, with a small addition from the public funds. The fact of having this small addition, whose validity has been passed upon by the courts, establishes the right of the public school teacher to a pension from public funds.

## MUSICIANS.

The American Federation of Musicians has greatly improved conditions for its membership, which includes women. A non-union player at a dance gets from \$2 to \$4 a night and may have to play until daylight. Not so union players. They can ask \$6 until 2 a. m. and \$1 for every hour thereafter. The Chicago and St. Louis locals have established regulation uniforms for their members, which is a great economy.

## VAUDEVILLE ARTISTS.

Vaudeville actresses have to be grateful for the safer and more decent conditions which their mixed union has brought to them. Separate and sanitary dressing rooms are now to be found in the unionized five and ten-cent theaters in Chicago. An act which formerly might have had to be repeated fifteen times, cannot be asked for more than eight times on a holiday and four times on other days.

## WAITRESSES.

Unorganized waitresses often have to work seven days a week and sometimes fourteen hours a day; they have to provide their own uniform and pay for its laundering. Organized waitresses have a ten-hour day and a six-day week. Their wages have risen from \$5 and \$6 to \$7 and \$8 per week and meals. Their

uniforms and laundry expenses are found for them. They enjoy a \$3 sick benefit for thirteen weeks and the union pays a \$50 death benefit.

There are some trades which have been organized and which yet record thus far no marked improvement in the condition of the workers. This may be either because the organization has been in existence too short a time or because of other reasons. Among such trades are sheepskin workers, badge, banner and regalia workers, human hair workers and commercial telegraphers. Even in these trades steady educational and organizing work is proceeding. Moreover the union may have been an influence preventing further wage cutting, higher speeding up or the imposition of more overtime.

The trade union is the great school for working girls. There they are taught the principles of collective bargaining. They learn to discuss difficulties with employers, free from the rasping sense of personal grievance. They learn to give and take with equanimity, to balance a greater advantage against a lesser one. In union meetings and conferences where they meet on an equality with their brothers it is the girl of sober judgment, good humor and ready wit who becomes a leader, and influences her more inexperienced sister to follow her.

The trade union is educating the community as well as the girl. There is a growing tendency among men and women of the teaching, clerical and other non-manual occupations to recognize the common interest of all workers, and to form under one name or another associations to affiliate with the labor movement. One of the largest of these is the Teachers' Federation of Chicago which has now been many years in existence. More recently stenographers' and typists' associations have been formed in New York and Chicago. The formation of actors' and musicians' associations is additional proof of the same spirit.

The influence upon the whole community of organized insistence upon human conditions for the worker is marked. Trade-union standards tend eventually to become the standards toward which all non-union establishments that claim to treat their employees well voluntarily approximate. Trade-union standards are the standards up to which decent non-union em-

employers keep steadily inching along in respect to hours and conditions of work, and often even in respect to that most crucial test of all, wages. Trade-union standards are, in short, always tending to become in the eyes of the public the normal standards in the whole world of industry. Indeed everywhere the paradox is to be noticed that the non-union girl benefits remarkably as the result of the existence of a union in her trade. Under pressure of competition employers frequently state that their trade will not bear shorter hours or higher wages. Curiously enough, such statements are much more frequently made in unorganized than organized trades, and the employers more frequently act up to their statements.

Unions, furthermore, have an important indirect influence on legislation. In trade after trade, the benefits of shorter hours have been gained through organization in states where there was no legislation and no prospect of it. This is seen in many branches of the garment-making industry, among waitresses, tobacco strippers, printers and bindery women all over the United States. A ten-hour day, a nine-hour day, an eight-hour day, even a forty-four-hour week, for different bodies of these workers, have been for them the fruits of organization. These advantages gained, the evidence of workers who enjoy shorter hours and the experience of employers who conduct their establishments under a system of shorter hours form the strongest and most practical argument by which legislators are influenced to consider the practicability and desirability of the shorter working day.

Trade unions, indeed, cannot beat back the ocean, though they have been known to think they could. They cannot raise wages beyond certain limits, though the obstacles that bar further upward movement in a particular trade may be quite beyond the ken of the wisest in or out of the labor movement. They cannot always prevent wages from falling, whether that fall be expressed in actual cash or measured in purchasing power. International competition, the introduction of machinery, or the opening of fresh reservoirs of cheaper foreign labor may press wages down with irresistible force.

But more and more unions ought to be able to lessen the cruel

abruptness with which such changes fall upon the worker. By no known means can the action of economic forces be prevented, but their incidence can and should be altered.

Under our present chaotic no-system every mechanical improvement, every migration of population, the entrance of women into trades followed by men, or even the paltriest change of fashion in shirtwaists or hatpins, may bring in its train frightful suffering and destruction of life and all that makes life valuable, instead of a peaceful shifting of workers and re-alloting of tasks. All this might be largely prevented. The right of the worker, for instance, to demand notice when any great alteration in a factory process is impending would in itself do much to make adjustment to social changes smooth and relatively easy. Great suffering unquestionably resulted from the introduction of the linotype, but it was nothing to what would have been but for the fact that the printers were a strongly organized body and were able to make conditions with employers when the machine was first introduced. What the printers were able to do on a small scale the organized labor movement ought to be able to do for all workers.

On another side, moreover, the woman trade unionist comes up against a dead wall. No matter what her standing in her union, no matter how justly and fairly she be treated by her men fellow workers in the labor movement, the fact remains that she is not a voter. One hand is tied. Till she has the vote she can not as a member of the union have the same influence upon its policies as if she were a man and a voter, nor outside can her services be of the same value to the union as if she were enfranchised.

As regards her special needs as a woman, her organization does not speak for her, nor can she insist that it shall speak for her as it would do if she were a man. For instance, badly as striking men are often treated at the hands of the courts, striking women fare worse. It was not a trade unionist but a suffragist, Mrs. Rachel Foster Avery, who drew attention to the widely different treatment meted out to the striking chauffeurs and the striking shirtwaist makers in New York City, where the offenses with which the women were charged were far more trivial than



those of which the men were accused. Whether it is in an industrial dispute, in the legislature, or in the courts, that woman is struggling for what she considers her rights, it is always political weapons which in the last resort are turned against her, and she stands helpless, for she has no political weapon wherewith she may defend herself and press her claim to attention.

If the trade union be the only audible voice of the worker in any trade, the association of women's unions known as the National Women's Trade Union League is the expression of the women's side of the whole trade-union movement of the United States. It has taken up the special work of organization among women undistracted by the much larger mass of general field work that falls to men. The idea of the league originated with William English Walling, who got the suggestion from observation of the working of the British Women's Trade Union League. Their plan was adapted to suit American conditions. The American league is a federation of women's trade unions, which admits also organizations such as clubs and societies declaring themselves in sympathy with the cause of labor. It has also a large individual membership composed of trade unionists (men and women) and of other sympathizers. In this broad basis of membership lies its strength. It links into bonds of active practical endeavor after better conditions persons in every class of society, while any tendency to slip into unreal or unpractical methods is checked by the provision that on all boards whether national or local a majority of the members must always be trade-unionist women.

The league platform demands:

1. Organization of all workers into trade unions.
2. Equal pay for equal work.
3. An eight-hour day.
4. A minimum wage scale.
5. Full citizenship for women.
6. All principles involved in the economic program of the American Federation of Labor.

In both its national and its local organizations the league spends much of its energy in the adjustment of labor difficulties among women workers, in giving active assistance in time

of strikes and in presenting actual industrial conditions through lectures and literature to universities, churches, clubs and trade unions. It presses home the increasing dangers of industrial overstrain on the health of women, the necessity for collective bargaining, wise labor legislation and full citizenship for women. Through its membership, representing many thousands of working women, the league is able to obtain for the use of social workers, investigators and students actual first-hand information regarding the dangers of wrong industrial conditions.

The reasons why such an organization must be more elastic than a body like the American Federation of Labor, is because of the very different relation in which women stand to organized industry. The connection of the great bulk of women with their trade is not permanent. Seven years is the average duration of women's wage-earning life. The average woman unionist is a mere girl. An organization of men, in which mature men are the leaders and in which the rank and file join for life, has a solidity and permanence which unaided groups of young girls, groups with membership necessarily fluctuating, can never achieve.

What more right and fitting then that the maternal principle in the community as represented by the motherhood of the country should ally itself with this movement in support of good conditions and happy lives for the future mothers of the country? This is strikingly put in Mrs. Raymond Robins' address as president at the second biennial convention of the National Women's Trade Union League: "It has happily fallen to the lot of the Women's Trade Union League to have charge and supervision of the kindergarten department in the great school of organized labor. It is for this reason that music and merry-making is so essential a feature of our league work, with books and story telling and all that makes for color and music and laughter and that leads to essential human fellowship—a sure foundation for the industrial union of our younger sisters. We know that we need them; they will later know how greatly they needed us."

## A WOMAN'S STRIKE—AN APPRECIATION OF THE SHIRTWAIST MAKERS OF NEW YORK

HELEN MAROT

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THE usual object of monographs on strikes which appear in economic journals is to state impartially both sides of the controversy, so that students and a public more or less remote from labor struggles may estimate their merits. Such monographs are presentations of well-defined facts which are reducible at times to mathematical certainties. They recognize that passionate human feeling has swayed action on both sides and the endeavor is to lift labor disputes from the heat of emotion to intellectual consideration. These monographs may give correct estimates of strikes in industries thoroughly organized both as to capital and labor. Strikes in such industries are often the result of bad business management or a slip in judgment on one side or the other. But the great number of strikes occur in industries imperfectly organized; the passion or emotion which swings the battle is as important a factor as is either an extortionate demand for wages or a flagrant exploitation of wage earners. It is well that the public shall estimate this strike and that, but to do so it must also understand the motive forces.

The present article does not attempt to estimate either the moral or the economic factors in the recent shirtwaist-makers' strike of New York, but to lay before the reader some of those motive forces which may be counted upon in strikes composed of like elements, especially in strikes of women in unorganized trades.

The shirtwaist-makers' "general strike," as it is called, followed an eleven years' attempt to organize the trade. The union had been unable during this time to affect to any appreciable extent the conditions of work. In its efforts during 1908-9 to maintain the union in the various shops and to pre-

vent the discharge of members who were active union workers, it lost heavily. The effort resolved itself in 1909 into the establishment of the right to organize. The strike in the Triangle Waist Company turned on this issue.

The story of the events leading up to the Triangle strike as told by a leading member of the firm practically agrees with the story told by the strikers. The company had undertaken to organize its employes into a club, with benefits attached. The good faith of the company as well as the working-out of the benefit was questioned by the workers. The scheme failed and the workers joined the waist-makers' union. One day without warning a few weeks later one hundred and fifty of the employes were dropped, the explanation being given by the employers that there was no work. The following day the company advertised for workers. In telling the story later they said that they had received an unexpected order, but admitted their refusal to re-employ the workers discharged the day previous. The union then declared a strike, or acknowledged a lockout, and picketing began.

The strike or lockout occurred out of the busy season, with a large supply at hand of workers unorganized and unemployed. Practical trade unionists believed that the manufacturers felt certain of success on account of their ability to draw to an unlimited extent from an unorganized labor market and to employ a guard sufficiently strong to prevent the strikers from reaching the workers with their appeals to join them. But the ninety girls and sixty men strikers were not practical; they were Russian Jews who saw in the lockout an attempt at oppression. In their resistance, which was instinctive, they did not count their chances of winning; they felt that they had been wronged and they rebelled. This quick resentment is characteristic of the Russian Jewish factory worker. The men strikers were intimidated and lost heart, but the women carried on the picketing, suffering arrest and abuse from the police and the guards employed by the manufacturers. At the end of the third week they appealed to the women's trade union league to protect them, if they could, against false arrest.

The league is organized to promote trade unions among

women, and its membership is composed of people of leisure as well as of workers. A brief inspection by the league of the action of the pickets, the police, the strike breakers and the workers in the factory showed that the pickets had been intimidated, that the attitude of the police was aggressive and that the guards employed by the firm were insolent. The league acted as complainant at police headquarters and cross-examined the arrested strikers; it served as witness for the strikers in the magistrates' court and became convinced of official prejudice in the police department against the strikers and a strong partisan attitude in favor of the manufacturers. The activity and interest of women, some of whom were plainly women of leisure, was curiously disconcerting to the manufacturers and every effort was used to divert them. At last a young woman prominent in public affairs in New York and a member of the league, was arrested while acting as volunteer picket. Here at last was "copy" for the press.

During the five weeks of the strike, previous to the publicity, the forty thousand waist makers employed in the several hundred shops in New York were with a few exceptions here and there unconscious of the struggle of their fellow workers in the Triangle. There was no means of communication among them, as the labor press reached comparatively few. In the weeks before the general strike was called the forty thousand shirtwaist makers were forty thousand separate individuals. So far were they from being conscious of their similarity that they might have been as many individual workers employed in ways as widely separated as people of different trades, or as members of different social groups.

The arrests of sympathizers aroused sufficient public interest for the press to continue the story for ten days, including in the reports the treatment of the strikers. This furnished the union its opportunity. It knew the temper of the workers and pushed the story still further through shop propaganda. After three weeks of newspaper publicity and shop propaganda the reports came back to the union that the workers were aroused. It was alarming to the friends of the union to see the confidence of the union officers before issuing the call to strike. Trade unionists

reminded the officers that the history of general strikes in unorganized trades was the history of failure. They invariably answered with a smile of assurance, "Wait and see."

The call was issued Monday night, November 22nd, at a great mass meeting in Cooper Union addressed by the president of the American Federation of Labor. "I did not go to bed Monday night;" said the secretary of the union, "our Executive Board was in session from midnight until six a. m. I left the meeting and went out to Broadway near Bleecker street. I shall never again see such a sight. Out of every shirtwaist factory, in answer to the call, the workers poured and the halls which had been engaged for them were quickly filled." In some of these halls the girls were buoyant, confident; in others there were girls who were frightened at what they had done. When the latter were asked why they had come out in sympathy, they said; "How could you help it when a girl in your shop gets up and says, 'Come girls, come, all the shirtwaist makers are going out?'"

As nearly as can be estimated, thirty thousand workers answered the call, or seventy-five per cent of the trade. Of these six thousand were Russian men; two thousand Italian women; possibly one thousand American women and about twenty or twenty-one thousand Russian Jewish girls. The Italians throughout the strike were a constantly appearing and disappearing factor but the part played by the American girls was clearly defined.

The American girls who struck came out in sympathy for the "foreigners" who struck for a principle, but the former were not in sympathy with the principle; they did not want a union; they imagined that the conditions in the factories where the Russian and Italian girls worked were worse than their own. They are in the habit of thinking that the employers treat foreign girls with less consideration, and they are sorry for them. In striking they were self-conscious philanthropists. They were honestly disinterested and as genuinely sympathetic as were the women of leisure who later took an active part in helping the strike. They acknowledged no interests in common with the others, but if necessary they were prepared to sacrifice a week



or two of work. Unfortunately the sacrifice required of them was greater than they had counted on. The "foreigners" regarded them as just fellow workers and insisted on their joining the union, in spite of their constant protestation, "We have no grievance; we only struck in sympathy." But the Russians failed to be grateful, took for granted a common cause and demanded that all shirtwaist makers, regardless of race or creed, continue the strike until they were recognized by the employers as a part of the union. This difference in attitude and understanding was a heavy strain on the generosity of the American girls. It is believed, however, that the latter would have been equal to what their fellow workers expected, if their meetings had been left to the guidance of American men and women who understood their prejudices. But the Russian men trusted no one entirely to impart the enthusiasm necessary for the cause. It was the daily, almost hourly, tutelage which the Russian men insisted on the American girls' accepting, rather than the prolongation of the strike beyond the time they had expected, that sent the American girls back as "scabs." There were several signs that the two or three weeks' experience as strikers was having its effect on them, and that with proper care this difficult group of workers might have been organized. For instance, "scab" had become an opprobrious term to them during their short strike period, and on returning to work they accepted the epithet from their fellow workers with great reluctance and even protestation. Their sense of superiority also had received a severe shock; they could never again be quite so confident that they did not in the nature of things belong to the labor group.

If the shirtwaist trade in New York had been dominated by any other nationality than the Russian, it is possible that other methods of organizing the trade would have been adopted rather than the general strike. The Russian workers who fill New York factories are ever ready to rebel against suggestion of oppression and are of all people the most responsive to an idea to which is attached an ideal. The union officers understood this and it was because they understood the Russian element in the trade that they answered, "Wait and see," when their friends

urged caution before calling a general strike in an unorganized trade. They knew their people and others did not.

The feature of the strike which was as noteworthy as the response of thirty thousand unorganized workers, was the unyielding and uncompromising temper of the strikers. This was due not to the influence of nationality, but to the dominant sex. The same temper displayed in the shirtwaist strike is found in other strikes of women, until we have now a trade-union truism, that "women make the best strikers." Women's economic position furnishes two reasons for their being the best strikers; one is their less permanent attitude toward their trade, and the other their lighter financial burdens. While these economic factors help to make women good strikers, the genius for sacrifice and the ability to sustain, over prolonged periods, response to emotional appeals are also important causes. Working women have been less ready than men to make the initial sacrifice that trade-union membership calls for, but when they reach the point of striking they give themselves as fully and as instinctively to the cause as they give themselves in their personal relationships. It is important, therefore, in following the action of the shirtwaist makers, to remember that eighty per cent were women, and women without trade-union experience.

When the shirtwaist strikers were gathered in separate groups, according to their factories, in almost every available hall on the East Side, the great majority of them received their first instruction in the principles of unionism and learned the necessity of organization in their own trade. The quick response of women to the new doctrine gave to the meetings a spirit of revival. Like new converts they accepted the new doctrine in its entirety and insisted to the last on the "closed shop". But it was not only the enthusiasm of new converts which made them refuse to accept anything short of the closed shop. In embracing the idea of solidarity they realized their own weakness as individual bargainers. "How long," the one-week or two-weeks-old union girls said, "do you think we could keep what the employer says he will give us without the union? Just as soon as the busy season is over it would be the same as before."

Instructions were given to each separate group of strikers to make out a wage scale if they thought they should be paid an increase, or to make out other specific demands before conferring with their employers on terms of settlement. The uniform contract drawn up by the union, beside requiring a union shop, required also the abolition of the sub-contract system; payment of wages once a week; a fifty-two-hour week; limitation of overtime in any one day to two hours and to not later than 9 p. m.; also payment for all material and implements by employers. Important as were the specific demands, they were lightly regarded in comparison with the issue of a union shop.

Nothing can illustrate this better than the strikers' treatment of the arbitration proposal which was the outcome of a conference between their representatives and the employers. In December word came to the union secretary that the manufacturers would probably consider arbitration if the union was ready to submit its differences to a board. The officers made reply in the affirmative and communicated their action at once to the strikers. Many of the strikers had no idea what arbitration meant, but as it became clear to them they asked, some of them menacingly, "Do you mean to arbitrate the recognition of the union?" It took courage to answer these inexperienced unionists and uncompromising girls that arbitration would include the question of the union as well as other matters. The proposition was met with a storm of opposition. When the strikers at last discovered that all their representatives counseled arbitration, with great reluctance they gave way, but at no time was the body of strikers in favor of it. A few days later, when the arbitrators who represented them reported that the manufacturers on their side refused to arbitrate the question of the union, they resumed their strike with an apparent feeling of security and relief. Again later they showed the same uncompromising attitude when their representatives in the conference reported back that the manufacturers would concede important points in regard to wage and factory conditions, but would not recognize the union. The recommendations of the conference were rejected without reservation by the whole body.

The strikers at this time lost some of their sympathizers. An uncompromising attitude is good trade-union tactics up to a certain point, but the shirtwaist makers were violating all traditions. Their refusal to accept anything short of the closed shop indicated to many a state of mind which was as irresponsible as it was reckless. Their position may have been reckless, but it was not irresponsible. Their sometime sympathizers did not realize the endurance of the women or the force of their enthusiasm, but insisted on the twenty to thirty thousand raw recruits becoming sophisticated unionists in thirteen short weeks.

It was after the new year that the endurance of the girls was put to the test. During the thirteen weeks benefits were paid out averaging less than \$2 for each striker. Many of them refused to accept benefits, so that the married men could be paid more. The complaints of hardships came almost without exception from the men. Occasionally it was discovered that a girl was having one meal a day and even at times none at all.

In spite of being underfed and often thinly clad, the girls took upon themselves the duty of picketing, believing that the men would be more severely handled. Picketing is a physical and nervous strain under the best conditions, but it is the spirit of martyrdom that sends young girls of their own volition, often insufficiently clad and fed, to patrol the streets in mid-winter with the temperature low and with snow on the ground, some days freezing and some days melting. After two or three hours of such exposure, often ill from cold, they returned to headquarters, which were held for the majority in rooms dark and unheated, to await further orders.

It takes uncommon courage to endure such physical exposure, but these striking girls underwent as well the nervous strain of imminent arrest, the harsh treatment of the police, insults, threats and even actual assaults from the rough men who stood around the factory doors. During the thirteen weeks over six hundred girls were arrested; thirteen were sentenced to five days in the workhouse and several were detained a week or ten days in the Tombs.

The pickets, with strangely few exceptions, during the first

few weeks showed remarkable self-control. They had been cautioned from the first hour of the strike to insist on their legal rights as pickets, but to give no excuse for arrest. Like all other instructions, they accepted this literally. They desired to be good soldiers and every nerve was strained to obey orders. But for many the provocations were too great and retaliation began after the fifth week. It occurred around the factories where the strikers were losing, where peace methods were failing and where the passivity of the pickets was taunted as cowardice. But curiously enough, during this time the arrests in proportion to the number still on strike were fewer than during the earlier period and the sentences in the courts were lighter. The change in the treatment of pickets came with the change in the city administration. Apparently, peaceful picketing during the first two months of the strike had been treated as an unlawful act.

The difficulty throughout the strike of inducing the strikers to accept compromise measures increased as the weeks wore on. However, seventeen contracts were signed in these latter weeks which did not give the union a voice in determining conditions of work of all workers in the factory. During the ten weeks previous, contracts were signed which covered all the workers in three hundred and twelve factories. Before the strike every shop was "open" and in most of them there was not a union worker. In thirteen short weeks three hundred and twelve shops had been converted into "closed" or full union contract shops.

But the significance of the strike is not in the actual gain to the shirtwaist makers of three hundred union shops, for there was great weakness in the ranks of the opposition. Trade-union gains, moreover, are measured by what an organization can hold rather than by what it can immediately gain. The shirt-waist makers' strike was characteristic of all strikes in which women play an active part. It was marked by complete self-surrender to a cause, emotional endurance, fearlessness and entire willingness to face danger and suffering. The strike at times seemed to be an expression of the woman's movement rather than the labor movement. This phase was emphasized

by the wide expression of sympathy which it drew from women outside the ranks of labor.

It was fortunate for strike purposes but otherwise unfortunate that the press, in publishing accounts of the strike, treated the active public expression of interest of a large body of women sympathizers with sensational snobbery. It was a matter of wide public comment that women of wealth should contribute sums of money to the strike, that they should admit factory girls to exclusive club rooms, and should hold mass meetings in their behalf. If, as was charged, any of the women who entered the strike did so from sensational or personal motives, they were disarmed when they came into contact with the strikers. Their earnestness of purpose, their complete abandon to their cause, their simple acceptance of outside interest and sympathy as though their cause were the cause of all, was a bid for kinship that broke down all barriers. Women who came to act as witnesses of the arrests around the factories ended by picketing side by side with the strikers. These volunteer pickets accepted, moreover, whatever rough treatment was offered, and when arrested, asked for no favors that were not given the strikers themselves.

The strike brought about adjustments in values as well as in relationships. Before the strike was over federations of professional women and women of leisure were endorsing organization for working women, and individually these women were acknowledging the truth of such observations as that made by one of the strikers on her return from a visit to a private school where she had been invited to tell about the strike. Her story of the strike led to questions in regard to trade unions. On her return her comment was, "Oh they are lovely girls, they are so kind—but I didn't believe any girls could be so ignorant."

The strike was an awakening for working women in many industries, and it did more to give the women of the professions and the women of leisure a new point of view and a realization of the necessity for organization among working women than any other single event in the history of the labor movement in this country.



## VOCATIONAL TRAINING FOR WOMEN

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POPULAR discussions of industrial training are rendered difficult by the fact that the subject has as yet no fixed vocabulary. Professional training, vocational training, industrial training, manual training, are often used interchangeably. We shall use the phrase "vocational training," and shall understand it to include such education as aims to secure efficiency in the occupation followed for self-maintenance, whether such occupation be the merest task or the complex administration of a business or a profession.

It is evident that such training involves education for general intelligence, as well as technical training with a specific end in view. It is also clear that the training may be brief and elementary if the task is simple; the trade school, or apprenticeship, or even the brief course of lessons given by another worker may suffice where the work calls for little skill and involves little variety. As the task grows in difficulty, requiring application of principles, demanding judgment, broad experience, ability to deal with and to direct others, the training must be proportionately increased. The demand for general intelligence also grows correspondingly.

The instrument for vocational training, then, may be the shop, in which knowledge of the art is handed along from one worker to another through simple apprenticeship; or the trade school, in which a brief course of instruction is given, with emphasis upon technical details and swiftness of accomplishment; or the technical college, which provides longer courses of instruction, combining academic and technical programs, alternating the lecture room with the shop; or actual apprenticeship in business; or professional training, superadded to the ordinary program afforded by school and college.

Is vocational training necessary for women? As a matter

of fact, women are already in trades and professions. For years they have been filling our factories, stores, offices and schools. We have made public provision for the preparation of teachers, and many states likewise train women for the practice of medicine. Hospitals have provided training schools for nurses. In these fields some provision has been made for the appropriate education of women for their work. Enough experience has been accumulated to show that training for the vocation is always beneficial, and usually essential.

The ordinary woman, however, has little specific training for the most important work which she has to do in the world. It is left to her mother alone to teach her how to maintain her home and to meet the needs of her children. If the mother is ignorant, the daughter is untaught, and a long train of evils follows in consequence. As this matter concerns the general welfare the evils should be prevented, if possible, by general education.

It is generally conceded that in preparing a girl for her work we have to consider two vocations as probable or possible:—first, maintenance of the home, with the care and rearing of children; second, the vocation by which self-maintenance may be assured in the period before she becomes a homemaker, or during the time when she is obliged to support herself and her children. Since the first or major vocation is essential to the general welfare it must always be linked with the second or minor vocation. Therefore no work for woman can be urged or defended which tends to lessen her efficiency in her major occupation.

Yet at this point we neither think nor speak clearly. Vocational training for women would be less complex if their economic contribution as homemakers were fairly considered. A woman is said to “earn her living” only when she works outside her own home, receiving money for her work. The moment her wage-earning power is transferred to her home she is supposed to be dependent upon father or husband, no matter how great the compensating service which she renders. A teacher earning twelve hundred dollars a year resigns her position, marries, cares for home, husband and children, transferring

her income-earning power to the duties required in the service of the household. Is she not still self-supporting,—more than self-supporting? Out of the family income, through her ability, knowledge and skill, she is enabled to save a fair margin. If the family were bereft of her contribution the margin would be quickly swallowed by wages paid to housekeeper, nurse, seamstress, cook and others, who together fail to fill her place. Many a family becomes a public charge when the mother dies. If it were possible to fix according to some scale the economic value of woman's contribution in the home, it would immediately be evident that the training which makes her a better and more efficient homemaker is of direct economic advantage to the community. Vagueness of preparation would probably disappear with clearer understanding of the relation of her work to the public good.

One of the first principles of vocational training for women, then, is that such training should insure greater ability, judgment and skill in the major vocation, thus securing the intelligent maintenance of the home. The second principle, or corollary, is that the minor vocation should be so conducted as not to interfere with the fulfilment of the first or major task.

The need of vocational training for women presses most heavily where self-support is imperative in early years. Discussion of the subject may be clouded by the fact that the obvious need varies widely—according to the opportunity and environment of the group under discussion. For the sake of clearness, then, we will consider three groups. In the first group we count the young girls who are forced to leave school at the earliest possible or permitted age in order to engage in some specific occupation for self-support or to assist in the support of the family. In this large company we find most of the daughters of recent immigrants, as well as many other girls whose families have very limited means, or who have suffered stress through illness or other unusual hardship. The farm, the factory, the office, the store, are already employing these girls in large numbers, unskilled in the beginning and often, except as to some small task, unskilled in the end.

Should such girls be deprived of the essential instruction for-

merly accredited to the home, and go from their years of employment to their future homes as ignorantly as they entered upon their daily task in the shop? Are they in any sense fitted for the larger responsibility which the major vocation brings? Are their years of trade experience made profitable by wise choice and fair preparation, or do they encounter by chance the immediate demand of some trade, using them for its advantage as part of a machine demanding swiftness and dexterity in a single operation, repeated countless times, and considering the salability of the product and not the welfare of the young worker?

If such conditions exist—and we know that they do—these girls should be as far as possible protected by suitable education in advance, which should develop skill and judgment, acquaint them in some measure with fair trade conditions, make choice of occupation to some degree possible, and safeguard their health and the interests of their future homes. Concerning the need of such trade training there is now little disagreement—the fact is generally conceded. The main question is whether it should be supplied at public expense, and by what means. Private philanthropy, by intelligent and generous experiment, has paved the way.

The second group to be considered may roughly include the girls whose entrance upon gainful occupations is longer delayed, but who must as a matter of course look forward to self-maintenance. These girls avail themselves of the opportunities afforded by the ordinary program of the graded schools, and may or may not add some portion or all of the high-school course. They have had a more generous inheritance than the first group. Their homes are usually better endowed, or they may be the younger sisters of members of the first group. Their need is less pressing—but by no means less real. The school should test, and if need be, supplement their preparation for the responsibilities centering upon the home. It should also make them to some degree technically ready for a wholesome occupation, affording a living wage. Otherwise they too are at the mercy of trade conditions, earning a scant income at an employment selected by chance.

To the third group will be assigned all women whose opportunities of education exceed high-school training. For them vocational preparation may be assigned to the college period or may possibly follow it.

It is often assumed that academic training in itself gives technical skill, that the young woman who graduates from college is thereby prepared for any task which may confront her. This is a misconception of the function of the college. If it does its work well, a good foundation is laid, certain aptitudes and habits of thought are developed, which should make progress in any art or craft more rapid, and judgment more intelligent. On the other hand, long years given to purely academic work, away from the normal conditions of the working world, permit certain powers to lie dormant. Students are trained to deliberation rather than to action. The college woman may need adjustment to the conditions of the shop, the office, or even the school. Training which presupposes the task and keeps it in mind certainly advances the general preparation of any student for her work. If we acquaint her with the immediate problems of the task the necessary period of apprenticeship is shortened and rapid advancement assured. Such training seems reasonable. Why should the education of the girl lie completely outside her work in the world? Why should so deep a gulf be fixed between the school and the later task?

The vocational aim need not diminish the so-called cultural value of a subject. Need the study of bacteriology become less "broadening" because the nurse-to-be recognizes its relation to her future work, knowing that she is to apply its truths in sanitation and disinfection, in antiseptic precautions, in securing surgical cleanliness? Is the "social worker" of tomorrow a less intelligent student of economics to-day because she is conscious of the problem with which she personally is to deal? On the other hand, is a girl more liberally educated because for four "finishing" years of her education her program of studies tacitly ignores all reference to the sacred responsibility which she is so soon to assume—or which she must help others to meet? Rather, is not the whole course of study enlightened and informed by

recognition of the goal and by conscious endeavor to reach it? If this be true, education which includes vocational training is far more liberal than that which ignores or excludes it.

It seems to the writer that the trend of educational thought is in this direction. The college woman as well as her less favored sister must be trained, "not simply to be good, but to be good for something", not simply to be wise, but to be fully and definitely prepared for service;—and this conception is perhaps the most important contribution of higher education to the advancement of vocational training. Remote as it may seem, it nevertheless influences the general ideal. We cannot expect the average parent to take pains to insure in his daughter's education the thing which the college despises.

If we accept the proposition that the maintenance of the home is woman's major vocation, all women are included in the group for whom vocational training is essential. The responsibility of providing such instruction is divided between home and school. Exactly as practise under shop conditions is essential for complete industrial training, so practise in a home with wise guidance under normal conditions is indispensable to the best preparation for maintaining a home. Girls who are so fortunate as to live in homes where this instruction is afforded are therefore least in need of supplemental instruction in the public school or other instruction provided for the purpose. The girl who is most in need of industrial training for self maintenance is also likely to be in greatest need of training for home-keeping. Unless she is taught better she will perpetuate the same type of home from which she has sprung, and this in itself is a menace to the community. There is, then, a double reason for providing adequate training in home matters for girls in the more favored homes. Out of their abundance they must help lift the standard of those who are less favored. Home training, however, must be supplemented by general school instruction which approves the higher standard of living, and shows its relation to the community. It is to the advantage of both these groups that standards of right living should be set forth in the schools and approved by them.

It follows that the largest possible influence is inherent in the



position of the college woman whose training leads her to recognize the relation of the home to the community, who fits herself to assume her own responsibilities intelligently, and who uses her influence in lifting the standard of the homes which have been less intelligently administered. The college has an indispensable part to play in the development of vocational training. As soon as the college for women incorporates into its accepted program courses which will assist in conscious preparation for the maintenance of the home, the standard of living throughout the country will feel its beneficent influence.

The vocational aim being openly and generally accepted, the public schools will provide for appropriate training. This will include: 1. Provision of courses tending toward intelligent home administration in all programs outlined for women and girls. 2. Some means of testing proficiency in these arts and principles, however acquired, so that at least a minimum amount of preparation will be exacted of all girls. 3. The establishment of centers where household administration can be taught by example and practise as well as by precept. By means of supplementary vacation schools, evening schools and continuation schools, housekeepers, young mothers and others in need of specific instruction may receive the necessary help exactly as the plumber may now reinforce his knowledge through a course in an evening school.

The agencies thus far enumerated will provide the elementary instruction immediately required. Such instruction, however, will not be possible unless suitable teachers are provided, and these must naturally be women of large opportunity and experience. This presupposes higher courses in technical schools or colleges which consider the problem in the large and train teachers and workers for leadership. Again it becomes clear that the college should establish proper technical courses.

The need of three agencies for vocational training is apparent: for the immediate need of the young beginner, the trade school; for the middle group, the technical high school; for the leader, the technical college.

The trade school and the vocational center meet the immediate need of the young worker. Exactly as the girl from the

poor and meager home must depend upon intelligent instruction to raise her standard of living, so her judgment and skill must be reinforced when she confronts the problem of self-maintenance. She is pushed by necessity into the ranks of wage-earners, knowing nothing of the field she is entering, and she must make the best terms she can with those who take advantage of her ignorance. As an unskilled worker she must follow the crowd and take what she can get. General schooling has left the hand unskilled and the judgment untrained. She has neither knowledge of her own ability, nor the immediate advantage of a known employment. She is entitled to instruction which considers not trade profit alone but the advantage of the worker, which makes possible intelligent choice of the best course available and shortens the period of unpaid apprenticeship. In short, the education which she sorely needs as she faces self-maintenance is specific preparation for wage earning and the conditions involved in it.

Two conditions are essential to this training: first, a thread of manual vocational work throughout the ordinary school program for all girls, to train hand and eye and develop taste and judgment along practical lines; second, special schools for industrial training, with brief, intensive courses, to which girls may be sent for a preparatory period when facing the necessity of self-maintenance, the minimum requirement of general training having been covered in the ordinary school. These centers of industrial or trade training should be separate from the academic centers and should supply as far as possible the conditions of apprenticeship. They should be free from the fixed classifications and grades of the school, and should afford illustrations and types of vocational experience. To such public provision as may be made for such centers, private philanthropy will for a long while bring its aid, for vocational training must be tied to individual conditions and must ask for coöperation from manufacturer and employer. Supervised apprenticeship in chosen places of work will for a time take the place of organized training schools, as for example, in the case of the hospital dietetician, the house decorator, and the photographer. But elementary courses, requiring accuracy, speed, and an ordinary de-

gree of skill, may even now be provided by the school. The seamstress, the machine operator, the saleswoman, the typewriter, the clerk, the bookkeeper may be trained in such centers.

The technical high school meets the needs of the second group by providing courses which develop manual dexterity, and acquaint the student with the outlines of some practical employment. Notable examples of such schools in New England are the technical high schools of Newton, Springfield, and Boston. In these schools the academic requirement is lessened and courses are arranged in sewing, dressmaking, millinery, cooking, laundry work, household decoration, and sanitation, with ample training in commercial subjects and preparation for clerical work, including stenography, typewriting and bookkeeping. So far as possible the school product is expected to be of service just like the ordinary commercial product. In one school the girls prepare the luncheons which are served to instructors and classes. In another the garments made are sold to cover the cost of material. These schools provide adequate instruction in household arts and at the same time pave the way for a useful vocation. The numbers that flock to them testify to the demand for such training, and many girls who otherwise would have withdrawn at the end of the grammar-school course are glad to remain and profit by the practical opportunity thus afforded. Already the effect of the instruction is shown in increased wage-earning power. Those who have followed the movement are equally sure that the individual homes profit by the vocational training.

An interesting example of the technical college is afforded by the recent development of Simmons College in Boston. This college was endowed by its founder, John Simmons, as an institution through whose offices women might be prepared for self-maintenance through appropriate training in art, science and industry. The trustees to whom the gift was confided made a careful study of the problem of education for self-maintenance, and eight years ago the college opened its doors. It provided courses of training for high school graduates, the programs in every case assuring technical instruction for certain fields of work, with the related academic training necessitated by the task. The work attempted is indicated by the various depart-

ments—household economics, library training, secretarial training, training in science (including preparation for nursing and for the study of medicine), and training for social service. The regular programs cover four years.

One hundred and twenty-five students appeared the first year; in the fifth, the college numbered over six hundred. The demand for its graduates has been constant. The register of graduates indicates this demand and shows the variety of positions for which the students have been technically trained and which they are now acceptably filling. The range of compensation exceeds that of the average college graduate, and in some fields is far above it. This is particularly true where executive ability, creative imagination, and the power of directing others are essential. In such positions technical training shows its worth.

The work of the secretary illustrates the need of technical training. The young woman who enters the course arranged for the secretarial school knows in advance something of the scope and character of the duties awaiting her. She knows that she must possess technical skill, that she must become an accurate and expert stenographer and typewriter, must understand accounts, must be able to file letters and find them after they have been filed, must transcribe dictation whatever the vocabulary involved, and must be familiar with business methods. She cannot follow the prescribed technical courses without becoming familiar with the personal requirements as well,—dignity, reserve, professional honor, promptness, patience, courtesy, adherence to contract, responsibility for service. All these are clearly set forth in the preparation of the secretary. This technical preparation is added to academic training, including English, modern languages, certain courses in science, economics, psychology and ethics, as in the ordinary college. At the end of the course the student is technically prepared for a position as college registrar, secretary to president or professor, to author or publisher, to lawyer or physician. She soon becomes capable of research or of executive organization. She commands from the beginning a better compensation than the apprentice could possibly receive. Already experience has shown the economic value of the training. Similar experience has proved

the wisdom of vocational courses outlined for managers of institutions, for dietitians in hospitals, for stewards, for directors of lunchrooms, for visitors to the poor, for librarians, nurses and social workers.

"What is my work to be? How can I prepare myself to do it successfully and through it to minister to human need?" These are the questions which the student is constantly asking as she confronts her task. The very presence and recognition of the task give point to the preparation and prevent it from being a mere course of training for one's own sake.

Conference with parents as well as with students shows the origin of the demand for vocational training in colleges. The assured expectation of self-maintenance; the desire to be prepared for self-maintenance, should necessity arise; the recognition of the necessity of preparation for home responsibilities; the demand for executive experts with an understanding of industrial conditions; the dearth of workers properly trained for their task; the taste and liking for practical affairs; the desire to be of definite service in the world—all these are factors in the student's demand for vocational training. The woman with one talent emerges from the course prepared to perform some one task well and glad to meet its demands. It is a privilege and not a burden to be shirked. The ten-talent woman goes out with the power to modify circumstances, to improve conditions, to direct enterprises, to assume executive control. In either case the vocational aim is essential.

Already trade schools, technical high schools and technical colleges are answering the demand for vocational training, and proving the existence of the need. Public opinion asks that woman be trained for her work. The one thing needful is that the school, as a public servant, shall come to recognize its true relation to this economic problem.

## TRAINING THE YOUNGEST GIRLS FOR WAGE EARNING

### SYSTEMS TO BE FOUND AT PRESENT IN EUROPE AND AMERICA

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**A**T the present time, even though the work has been but lately begun, excellent examples of trade and vocational education for girls can be seen in both Europe and America. The European schools have long since passed the experimental stage and are usually a regular part of the system of public instruction, supported by governmental grants. On the other hand with us this class of training, being new and as yet in a more or less tentative stage, is chiefly in private hands. The foreign schools give us valuable suggestions, but the direct copy of their work, successful as it is according to the special needs of paternal governments, is not altogether fitted to a growing democracy like the United States. National desires and needs plus the requirements of the community where the schools are placed must influence the trades selected, the course of study and the methods of instruction in every good school. European systems are adapted to the national and municipal conditions of their varied peoples.

The majority of the professional schools for girls abroad are planned for the middle classes who are in fairly comfortable circumstances and can therefore pay fees and take several years for training. It is only incidentally that such institutions help the poorer working people. With us such instruction must be arranged for all classes. It is no unusual thing to hear those who have visited the professional schools abroad recommend the incorporation of such instruction into our educational system to help wage earners, forgetting that four or five-year trade courses, often with fees and competitive examinations for entrance, would be impossible for the daughters of the poor working



classes in our large industrial cities. Our problem deals with the poorest as well as the well-to-do, the foreigner and the native-born.

The meeting of the need of the lowest-class worker is perhaps more pressing with us, for in European countries children are apt to continue in the occupation of their parents, and labor on the farm or at small home trades or in little shops or markets, as their ancestors did before them. Lines of class demarcation greatly effect schemes of education in Europe, and such discrimination is accepted as necessary. With us on the other hand the workers of the lowest rank are always struggling to get ahead, hence our schools must allow for such upward movement. Moreover, the wages of workers in this group are at the lowest figure, as they are forced by poverty to accept any wage they can get. The schools, then, must also study the industrial condition of the group and improve it.

Different types of education have been organized to train the youthful workers who rush into positions the moment the law will allow them to obtain working papers. The girls of this type cannot take advantage of the *Ecoles Professionnelles* of France, Italy and Belgium, of the *Frauenarbeitsschulen* of Germany or of the vocational and technical high schools of America. They have not the requisite education for entrance in the majority of cases and they have at best but a few months or a year to spare for training. The schools which have been planned to aid them in self-support may be grouped roughly under the following heads:

1. Elementary Vocational Schools.—Industrial training of a general character in the last two or three grades of the elementary school, which sends the pupils into life with a good practical working foundation.
2. Continuation Schools.—Weekday or Sunday classes for workers under sixteen years of age, which will help them to obtain a further practical education while they are working for self-support.
3. Apprenticeship, Trade or Factory Schools.—Special trade training after the compulsory school age is passed or in the year following graduation from the elementary school, consisting of

shop practice which can be taken by those who can still give a little additional time to training and who can thus be prepared to enter some good trade or business position closed to the untrained. Girls can thus enter industry with the ability to make a living wage and with the hope of rising.

I. The elementary vocational school aims to help the poorest and youngest workers. As large numbers of girls in the great industrial cities of the world are forced, on account of the poverty of their families, to go to work as soon as they reach the age when the law allows them to take out working papers, this class of school aims to provide them with an education immediately available for use. The *Volksschulen* of Germany and the *Ecoles Primaires* of France and Belgium have tried to meet this situation by making handwork compulsory through each year of the school. The American public school has done this intermittently, but now that the country is awake to the needs of the working class, severe criticism is heard everywhere of the general trend of our common schools in helping the few who go on to higher education, but doing little for the many who do not. Investigation of the mental and manual condition of the great body of our young wage earners shows them unable to use their hands well or to utilize their academic education. The unskilled trades which alone are open to them do not require much use of their academic education which after a year or two is almost forgotten. If they manage to get into the better positions they are unable to hold them, for their education has not been of the kind to help them practically in trade. The trouble is not that the education is not good, but that it is not put to practical use by these young wage earners after they leave school.

Workers of the lowest grade in the large industrial cities of the United States have to face a difficult economic problem. The father can seldom make enough to support his family well, so the mother is compelled to assist. The children as they reach fourteen, usually before they have completed the elementary school, are forced to take any position they can get, whether healthful or not, whether offering opportunities or not. These fourteen-year-old workers are too young to

go to school at night to continue their education, for their strength is sapped by day work; they are too poor to go to a trade school, for their wage cannot be given up by their families and the public school can offer them no more than free education (except in rare instances). Competitive examinations to obtain a supporting scholarship are generally beyond their reach, for they are handicapped by foreign birth, underfeeding and lack of mental acumen. As a consequence they are easily distanced in scholarship by the children of the middle-class workers who need the help less. The girls have to meet the most severe strain of the labor market; they must have money; they underbid their fellows and overcrowd the unskilled trades. The life itself is harder on them than on the boys, both physically and spiritually. These little girls are crowding into the labor market in appalling numbers. Their parents naturally want them to be self-supporting, but know not how to help them. They are often willing to sacrifice themselves and keep the children in school until graduation, but the girls resent the present course of study as useless and get out of school as quickly as possible. On the other hand both parents and children appreciate a curriculum which offers directly available, practical training, and they will do much to obtain it. Hence lately some of the wiser educators have offered industrial courses in the last three grades of the school to induce children to remain longer and to give them a good foundation adaptable to trade or to home use.

In 1907 the public schools of Boston began experiments in various parts of the city looking toward special vocational courses in the sixth and seventh grades. The North Bennett Street school was chosen as one center for industrial work. A special building was set aside and furnished with class rooms for sewing, textiles and design and was also equipped with kitchen, dining room and bedroom, thus giving excellent opportunity for applied lessons in housekeeping and housefurnishing. Fifty girls from the Hancock school in the neighborhood are chosen and are divided into two groups. They alternate with each other in taking academic and industrial work, both morning and afternoon being utilized. They have six and a half hours of

academic work to three and a half of industrial. The course of study recognizes woman's relation to wage earning and to the home, and the culture and technical work are well interrelated. The movement, already showing success, aims to vitalize the regular school studies, to gain the interest of the girls so they will remain in school until graduation, to enable each girl to determine intelligently her life work and finally to direct her into higher grades of occupation.

New York City has also started similar work in the special classes organized to help pupils who while old enough to have their working papers have not met the educational requirements. Other cities have also begun experiments of a like character, handwork and connected academic study being features in all these schools. Some of our private schools also are making special investigation of the varied conditions and needs of the people and are trying to adapt their work to these needs, so that when boys and girls are forced to leave school they will have a usable education. Examples of such wise adaptation to conditions can be found in the Ethical Culture school and the Speyer school in New York City.

Perhaps the most significant work of this character at the present time is in Germany. *Stadtschulrat* Dr. Georg Kerschensteiner of Munich, realizing that both boys and girls were dropping out of the *Volksschulen* at the first opportunity possible, planned a new and excellent course of practical study elective in the eighth school year. The work was begun in 1896. Many children remained in school to try it and so valuable did the experiment prove that the course was later made compulsory. Dr. Kerschensteiner felt that girls will eventually fall into one of the following classes: housewives who take charge of affairs at home, domestic servants, workers in commercial or industrial positions, governesses, teachers or companions. After the seventh grade each girl chooses the field for which she would like to prepare, and in the eighth grade the foundation is laid for future success in her chosen occupation. The eighth-grade work is not professional but is broadly vocational. The pupils take the entire course, after which they are given a "leaving certificate" and can go to work; but formal

education is not yet over, for they must attend a continuation school for one year at hours allowed by their employers. Each one is thus prepared for future usefulness, and German life and industries reap the benefit.

The curriculum of the eighth-grade class is as follows:

Religion (always given in German schools) 2 hours weekly; household management and cookery, 8 hours; needlework, such as is needed in the household, 4 hours; German, in business correspondence, moral and ethical training, reading lessons, including domestic subjects, hygiene and German family life, 6 hours.

Arithmetic, management of domestic accounts, elements of commercial arithmetic, cost of living and the maintenance of the home, 4 hours.

Gymnastics and singing are also included in the curriculum.

As a part of the training in household management there is instruction in clothing and housing which covers:

*a.* Study of the body.—Its functions and its care, breathing, circulation of the blood and properties of heat radiation and evaporation, and the preservation and regulation of heat through clothing.

*b.* The textile materials, raw and manufactured.—Their physical properties and use as clothing, hygienic rules, taste and suitability in dress, wet and dry cleansing of clothing, the bed and bedding.

*c.* Housing.—The properties of building materials, the position of the house, heating, lighting, ventilation and disinfection, hygienic rules in the household, and furnishing.

II. The continuation school helps those girls who are forced by poverty to go to work without sufficient education by giving them opportunity for further training in the evening, on Sunday or on weekday afternoons. Such schools are well developed in Germany. Compulsory day continuation schools (*Fortbildungsschulen*) are found in Bavaria, with Baden, Württemberg and Prussia inclined to follow closely. They aim not only to continue the intellectual and moral culture of the students, but to prepare them for definite trades and occupations. The work for girls is less developed along commercial and industrial lines



than that for boys, but in domestic features is very comprehensive. There are usually three divisions of work for girls—commercial, for clerks and secretaries; domestic, for training in home occupations; and industrial, for arts such as dressmaking, millinery, lingerie, art needlework, machine embroidery, designing, bookbinding and photography. Germany considers that such schools prevent the waste of life which occurs when workers are uneducated and unprepared. As these schools have employers of labor on their boards of management the work is practical and is kept up to the requirements of industry.

In Bavaria, as has been said before, when a girl legally finishes her compulsory education she can go to work, but she is not therefore released from school. She is offered her choice of the following courses:

- a.* The eighth-grade class for one year, 30 hours weekly, and the Sunday school or weekly continuation class for a year following.
- b.* A school which meets on Sunday for three years,  $3\frac{1}{2}$  hours a week.
- c.* A commercial or domestic continuation school for three years, 5 to 10 hours weekly.
- d.* A division of the three years of required education between these various kinds of schools.

Thus the Bavarian girl has a fine opportunity to prepare for her future and to be ready for her lifework no matter what it is. The eighth-grade work is duplicated in the continuation class, so that if the family finances are so straitened that the daughter cannot attend the eighth-grade class for a year, she can still obtain this valuable training in afternoon and Sunday classes. The government requirement that employers must allow their young employes to attend day school during each week is a wise one, for these girls are too young to profit by night instruction. The training has been found to give a good economic return, for the workrooms gradually obtain skilled help and the worker is enabled to obtain a good position and become a valuable citizen.

An excellent *Fortbildungsschule* is the *Frauenarbeitsschule*, carried on at *Oberangerstrasse 17*, Munich. The building, once



a palace, is large, simple and adequate; the work is excellent and well organized. The handwork is carried to a high pitch of technical skill and the domestic instruction offers opportunities for specialists.

One of the earliest continuation schools for girls was the Victoria *Fortbildungsschule* in Berlin, opened in 1878. The majority of the pupils are from the families of artisans and small tradesmen, and not from those of day laborers and factory hands. Opportunities for training on all sides of woman's life are offered, the work is excellently done and a beautiful spirit of service pervades the school. Each girl's characteristics are carefully studied and she is given the training best adapted to her. From such teaching it is not wonderful that there is an appearance of thrift and happiness among the German people.

Continuation classes in America up to the present have not been exactly like the German ones. Night classes under public instruction have offered academic, commercial and domestic courses of all kinds; but the aim has been general helpfulness rather than direct aid to young wage earners by supplementing with special training their defective preparation for business positions. The difference between the two governments is a factor in the situation. The German government can make such courses compulsory between definite ages and can require manufacturers to give up their young employes during certain hours of the day; but with us the wish of the voters of a city must be considered. The majority of our employers assert that competition is too close for any one firm to try the experiment unless all do the same, and to compel all means tedious legislation. It is of interest to know, however, that this interrelation between factory and school has already been tried with success for boys in Massachusetts and Ohio, and that the latter state will make the same experiment for girls. The following plan is in use in Cincinnati: The manufacturers agree to send boys from among their employes to attend school and at the same time to pay them a regular wage. The board of education provides the teachers, and the work in general is technical with as close application as possible to the special factory in which the boys are employed. A period each day is devoted

to general shop questions, shop practise, economic and civic questions. Practise in spelling, writing and reading in connection with the story of industries is given. It is expected that it will take four years for the average boy to complete the course, a period which corresponds to the four years of apprenticeship demanded by the unions. Reports are sent to employers of the attendance of their employes. As children under sixteen can work but eight hours a day, *i. e.*, 48 hours a week, the employer gives up four hours of this for school training. The boy therefore is in the shop for 44 hours and at school four hours per week. A bill has been introduced into the Ohio legislature recommending that this kind of instruction be made compulsory. The fact that a girl's business life is of uncertain duration makes more difficult a similar plan for her education, as employers are less inclined to allow her to take instruction in business hours. Many of the Cincinnati workrooms, however, have agreed to try the experiment.

A form of continuation work which promises well in trades employing boys is the school within the factory. When this education aims to develop the students broadly and not alone for specific use in one enterprise, it is the best kind of training. Beginnings of such instruction for girls have appeared in the training forewomen are obliged to give green girls, and more orderly courses are already developing. The social secretary now employed in so many large stores to look after the women workers has in some cases added the instruction of new employes to her duties. Courses in salesmanship, elementary studies, technical and domestic training, are at present being given as a part of the work of certain department stores. Filene's in Boston and the Wanamaker stores in Philadelphia and New York are doing work of this character for their employes.

III. The short-time trade or factory school offers all-day courses from a few months to a year in length to those girls who even though they must go to work early can arrange to give a short period to preparation for some industrial pursuit. The compulsory school years are over and the work papers obtained, but the student may or may not have finished the

elementary school work. In a city like New York with so large a foreign element half the students, at least, will not have completed the eight grades of school when they go to work. In Boston a larger proportion have been graduated. The trade-school problem has been partially met in a few of the cities of the United States. New York organized trade instruction for girls in 1902 and Boston followed in 1904. Milwaukee, Cleveland, Rochester and Albany have begun or are about to begin similar work, but as yet their schools have not been established long enough to show definite results.

In Europe this class of school, reproducing actual trade conditions and fitted for the poorest girls, is rare. In Belgium there are a few which are called apprenticeship schools. The one in Maldaghem is extremely interesting. The town is small and very mediæval. The school is housed in a new, simple building. The entrance is on the side, and a narrow long hallway, in which the students put their sabots two by two on both sides, stretches the length of the building. A steep little staircase leads to the upper floor where the business offices and workrooms are to be found. Orders are carried out as in any factory, the work being fine handwork, the operation of Corneli and single embroidery machines, beading, and crocheting on net and mousseline. Robe garments of embroidered net, scarfs, curtains and lace veils of fine character are produced, some of which come to the American market. The students are paid nothing while learning, but after their training is finished can continue to work in the school and receive a regular wage. The same town has another school for teaching the making of fine varieties of Brussels lace, the product of which is for the regular market. The building is an old type of peasant home with stone floors. These Belgian apprenticeship schools are under government inspection.

The type of apprenticeship school begun in the United States is quite different. The Manhattan Trade School of New York was the pioneer; the Boston Trade School was organized later on similar lines. A careful study of trade conditions in each city preceded the organization of instruction. Continual close touch with actual conditions is held by both schools to be nec-

essary in order to keep up to business requirements. They have thus fitted well into the business life of their particular cities. The schools differ from each other in the trades they offer just as the two cities differ. They both believe that trade conditions must be exactly reproduced in instruction; consequently they are organized as small factories. To aid the trade work and to develop a high-class worker, art and academic work adapted to the specific needs of each of the trades represented in the schools are given. Wholesale and custom work are taken in all departments. Systems of business shops headed by trade workers who can teach as well as conduct workrooms give the students real business organization under which to work. The results in both schools show that such practical instruction enables the workers to enter better positions, to gain higher wages and to continue to rise to more influential positions. Crude, thoughtless girls have been developed into thoughtful, reliable workers, and capable girls have been given the opportunity of rapid rise to positions suited to them.

In both schools stress is laid upon health work. By careful physical examinations, specific treatment, talks on hygiene, lessons on foods, and experience in simple lunchroom cookery, the health of students is brought to a higher level and they know how to keep it there. This of itself makes better workers, able to stand the strain of business life. Established health will also react favorably on their homes and families if they marry.

Training for domestic service is not usually appreciated or desired by the American girl of the large cities, for the industrial trades offer her better opportunities. Even Germany finds difficulty in attracting to her schools for training servants the class for whom the schools were intended. An excellently planned school for this purpose was opened some time since in Berne, Switzerland. The servant's course, six months in residence, includes the following work: cooking; care of kitchen, care of the cellar and keeping stores; gardening, including planting, cultivating, and gathering vegetables; laundry work; mending; and care of rooms. Rooms with board are rented in the school building to give practical experience to the student.

## EMPLOYMENT BUREAUS FOR WOMEN

M. EDITH CAMPBELL

Director Charlotte R. Schmidlapp Fund, Cincinnati

NO other agency stands so little for efficient service as the employment bureau. Scorned by the scientific because of its unscientific methods; condemned by the honest and conscientious because of its unjust earnings and unscrupulous policies; despised by the employer because of its failure intelligently to meet his needs; ignored by the seeker for work because of its deceptive guarantees, the employment bureau is far from commanding the respect of the industrial world. Consequently, employer and employe usually dispense with its services, and the woman who is busy molding for herself a new industrial career gives little thought to so ineffective a method for determining the direction of that career.

There is, however, in this very tantalizing condition of the employment agency that which stimulates as well as irritates. For the existence of an agency which might be a real power, rather than a mere semblance of one, creates a desire to convert the useless into the useful. The awakening of such a desire has been demonstrated by the establishment within the last few years of a number of bureaus<sup>1</sup> which are attempting to render the real service of which an employment bureau is capable. Moreover, several excellent studies on the subject have been published,<sup>2</sup> setting forth the inadequacy of present agencies and looking toward the development of some plan by which such

<sup>1</sup> The Alliance Employment Bureau, New York City; the Coöperative Employment Bureau for Women and Girls, Cleveland; Council of Jewish Women Employment Bureau, Pittsburg; Schmidlapp Bureau for Women and Girls, Cincinnati.

<sup>2</sup> *A Handbook of Employments*, by Mrs. Ogilvie Gordon, Aberdeen: The Rosemount Press; *Report on the Desirability of Establishing an Employment Bureau in the City of New York*, by Edward T. Devine, Russell Sage Foundation; *The Chicago Employment Agent and the Immigrant Worker*, by Grace Abbott, University of Chicago Press; *Annual Reports of the Alliance Employment Bureau, Reports on Investigations*, Mary A. Van Kleeck.

agencies could be helpful in solving the problem of the unemployed.

In one of these studies Mr. Devine states that the lack of employment is due to one of three causes:

1. Unemployableness because of inefficiency.
2. Lack of work.
3. Maladjustment—"The inability of people who want work to get quickly into contact with opportunities."

He further states that the employment bureau can offer no remedy for the first condition, for in that case only education and training will be effective; neither can it remedy the difficulty due to excess of supply over demand for labor. It can, however, if properly managed, help correct the maladjustment.

All the studies above mentioned agree with the opinion of a number of writers<sup>1</sup> dealing in detail with the question of unemployment, that the existing agencies have not met this question of maladjustment. Many commercial agencies resort to "dishonorable practices and fraudulent methods." The hunter for a job "becomes, because of his ignorance and necessities, a great temptation to an honest agent and a great opportunity to an unscrupulous one." Only a small proportion of these agencies have been found efficient, honorable, or even systematic. The work of charitable employment bureaus—those conducted under the auspices or management of philanthropic organizations—has been found extremely "fragmentary, uncoördinated and meagre," while their connection with charitable institutions has been of doubtful advantage. Trade unions also have been unable to deal effectively with their unemployed, or to attempt the formation of a systematic bureau.

Seemingly one of the simplest methods for employer and employe to find each other is the want column in the daily newspaper. But this method has proved too simple to be of more than nominal service. In the first place, careful investigation has conclusively shown that a large number of advertisements are either "fakes" or misrepresentations. The effect

<sup>1</sup> An excellent selected bibliography on employment bureaus and unemployment is contained in the report of Mr. Devine above referred to.



upon a girl of looking up several advertisements is marked. Her wearisome efforts and wanderings are usually rewarded either by finding the place taken or misrepresented, or by meeting with inexcusable carelessness and indifference on the part of the advertiser. Hence she is convinced that there are no real or serious wants for "Help—Female." A condition of which much complaint is made is the insertion of an advertisement and then a failure to give instructions to those with whom applicants will first come into contact. Consequently, when a girl appears to inquire for the work she is often told by an uninterested stenographer that no help is wanted. In such a case recently it was only by accidentally meeting the employer on the elevator that the writer discovered that there was an open position. Another employer had advertised in the morning paper, but had left his office before nine o'clock. His secretary could give no idea of the time of his return, or of the work desired. A number of applicants, she said, had already been there, but would have to come again. This waste of time, energy and carfare could be easily prevented by a bit of foresight and consideration. The employer may reply that the irresponsible girl fails him just as often. But surely the method of unfairness on both sides will never straighten out the tangle, and the employer by nature of his position and superior breadth of view, is the one to set the example of fairness.

The free state employment bureaus which have been established in several states are described, in the inquiries above referred to, as involved in politics and hence rendering a service perfunctory and inefficient. Miss Abbott calls attention to the fact that in these bureaus "no man is working on the general problem of unemployment and bringing the entire prestige of the state and its financial expenditures to bear on its solution." Also she notes that the combination of inspection of private bureaus with the duties of the superintendent of the state employment office prevents both good inspection and good administration.

These statements concerning employment and employment agencies in general have been repeated here because they bear upon the specific problem of the woman worker whose adjust-

ment to present industrial conditions is so difficult. The difficulties of this problem may be illustrated by a brief history of the effort to meet it that is being made in Cincinnati.

In the year 1907, Mr. J. G. Schmidlapp, of Cincinnati, in memory of his daughter Charlotte, placed in the hands of The Union Savings Bank & Trust Company securities amounting to something over \$250,000, saying that he wished the income to be used for the benefit of wage-earning girls, to increase their efficiency and power of self-support. It had seemed an easy matter "to help girls" before money for that purpose was available, but with abundant funds in hand, to decide just what to do proved a hard problem. Letters poured in from young women all over the country, until the board of trustees finally decided to restrict the use of the fund to individual young women needing financial assistance to complete their education. Even after the beneficiaries were limited to Hamilton County, the task of selecting them from the applicants was no easy one.

Accordingly the trustees were asked what they intended to do about the girls to whom assistance must be refused. When they replied that for these girls the fund was not responsible, the following facts were brought to their attention: First, we cannot intelligently assist in educating young women without a more accurate knowledge of just what lines of work will be open to them when their education is completed. Second, the number of girls who come to the office of the Schmidlapp Fund for advice, for information concerning work and for employment itself, almost equals the number who wish financial assistance. Third, the applicant who applies to be made more fit in her present industrial work cannot be assisted because there is no adequate provision in Cincinnati for industrial training for girls. Fourth, it is not at all improbable that the Schmidlapp Fund will train a young woman for a certain line of employment, only to find out later that the same employment brings to the beneficiary neither health, reasonable remuneration, nor mental development. Such a mistake will be due to lack of knowledge. Fifth, a wise expenditure for training individual girls cannot be made, and a positive waste in expenditure cannot be prevented

without more definite knowledge concerning the self-supporting life of young women. The board of trustees acknowledged the seeming consistency of these statements and gave consent to a further development of these ideas.

Within a radius of a mile of the Schmidlapp Fund's office are at least a dozen centers, to some of which for more than twenty years young women have been going to look for work. One would naturally turn to these bureaus for a few simple facts regarding the industrial life of young women in Cincinnati. Perhaps they could advise the Schmidlapp Fund as to the first step to take toward educating self-supporting young women. Perhaps they could give some information concerning the occupations in which women were engaged, not only as to numbers employed but also as to remuneration, chances for advancement, effect on health, and general advantages. Because of their unusual opportunity for coming into contact with practical shop life, they might be able to state in what way girls could be trained for any special occupation. They might be able to tell why a girl had changed her occupation a half dozen times within two years, whether it was her inefficiency or the irregular, seasonal character of the work. Such information would be a guide as to whether it was best to hold the girl to ordinary school life for a longer period, or to try to overcome her inefficiency by a different course of education. These bureaus had placed hundreds of girls, and had had constant intercourse with many more. Yet not a single bureau, even the one on which the state expended \$2,500 annually, could give any definite or helpful information. There proved to be a total lack of records, of systematic knowledge concerning the applicant and the job, and even of intelligent interest in the girl's industrial career. Here was a rich opportunity wholly lost. The Schmidlapp Fund found the most reliable way to gain the desired information to be through a bureau of its own. By this time, Mr. Schmidlapp had become so keenly interested that he decided to finance such a bureau without encroaching upon the Charlotte R. Schmidlapp Fund, which could still be used for individual girls. The bank, which Mr. Schmidlapp had made trustee of the fund and of which he had been the first

president, offered to house the bureau and to allow the work to enjoy its prestige. Consequently there now appears on the door of the trust department the following sign:

The Schmidlapp Bureau for Women and Girls  
Free Employment Department  
Vocation Department  
The Charlotte R. Schmidlapp Fund

We are beginning to attempt to do the things which ought to have been done for us twenty years ago. In the words of the annual report:

This Bureau will be based on the work of the Vocation Bureau in Boston, the Alliance Employment Bureau in New York, and on the work of Mrs. Ogilvie Gordon, of Scotland. It will have a close affiliation with all the social centers in Cincinnati, will be confined to work for women and girls, and its general scope and usefulness cannot be better formulated than in Mrs. Gordon's Handbook of Employment and in a report of the Alliance Employment Bureau:

1st. By well-planned education and congenial employment to bring as favorable influences as possible to bear upon upgrowing girls. If the first few working years of the girl can be spent industrially and to a good purpose, the parents and public may have confidence in the future of the women.

2d. To form a center of industrial information and a connecting link between school training and trade requirements, thus aiding in the development of industrial education.

3d. To make a constructive study of the facts involved in the problem of employment.

4th. To aid by counsel and information as well as by employment the girl who must be a wage earner.

Even the short experience of less than a year has demonstrated the value of such a center in Cincinnati. The carelessness, the ignorance, and the short-sightedness of parents have been brought to view over and over again in the case of girls who have been taken from school and placed in unskilled occupations where there is no chance for advancement or growth. This is sometimes due to necessity and dire poverty; but more often parents feel that a year or two more in the public school will not increase the girl's wage-earning ability, or else they can-

not discover what work the child is best fitted for, and do not know in what occupations she can at least attain some growth and promotion. This persistent withdrawal from school of girls at the age of fourteen is a cause for serious concern. We shall be guilty of criminal neglect if we longer refuse to face the situation. The already overworked teachers cannot supply the necessary guidance in other than a general way. It must be supplied by an outside agency, and as Miss Van Kleeck of the Committee on Women's Work so keenly points out, no agency for the purpose can be so helpful and efficient as one built on the needs of the individual girl.

Such a bureau will, in the first place, correct the evils and deficiencies of the present agencies. In the second place it will provide the only wise and strong foundation on which to build our educational and vocational structures for women.

To render the first service, an efficient employment bureau for women will of necessity attempt to do constructive work based on a knowledge of the evils and deficiencies which have been mentioned.

1st. Instead of no records, or inadequate ones, full and complete industrial records will be kept of both employer and employe. The one will show the conditions under which the girl does her work, and will give a careful description of the work to be done. The other will state the girl's home environment, her education or training, and her industrial history both before and after application. Both of these records will be verified by personal visits to the place of work and the home of the applicant.

2d. Instead of the selfish attitude of the commercial agency based on greed, and the perfunctory attitude of the state agency controlled by politics, there will be an attitude of fairness toward both employer and girl, based upon the sole desire to supply the need of the just employer with the ability of the responsible worker.

3d. Instead of indifference toward the relation of employer and employe, there will be an attempt, with a good chance for success, we believe, to lessen unfairness on both sides. Often a mere word of explanation, which can be given most effectively by a third party, brings consideration in place of irre-



sponsibility and injustice. Employers who complain constantly of the impossibility of securing steady workers, would be amazed at the reasons why the girls leave, as brought out in a recent inquiry based on work certificates issued to girls in 1907. Often through the unintelligent and short-sighted policy of a foreman—or, I regret to say, more often a forewoman—the employer loses a worker who proved, in another establishment, to be invaluable.

It may be of interest to note that the work we are trying thus to do in Cincinnati chanced to come to the notice of Governor Harmon and C. H. Wirmel, the commissioner of labor of Ohio. Both have evinced the greatest interest in the experiments and have asked for suggestions as to how the work of the state bureau in Cincinnati can be made more effective. Mr. Wirmel will attempt to use our system of records and in other ways to test the practicability of our methods. While, as Mr. Devine points out, a state or federal bureau can never do aggressive work, because the citizen can protest against "discrimination," public bureaus can give most valuable coöperation in the matter of records.

A number of such adjustments would go a long way toward righting the general maladjustment which so evidently exists between the supply and the demand for labor.

The second justification for the existence of these employment bureaus is unquestionably to assist in the development of industrial education—a problem which is now presenting itself in a formidable manner. That we are still far from adjusting education to woman's life is lamentably apparent. The public schools seem averse to training her for a trade lest they unadvisedly throw her into the employer's hands. The plea is still loudly heard that the girl must be trained for home life and for home life alone. If a girl goes into a trade, the school will not assume the responsibility of placing her under the deadening influences she is sure to encounter there. Hence she enters her trade untrained, with every possibility that trade experience will make her unfit for the home—not because of the nature of the occupation, but because of her own lack of intelligence concerning the occupation. While the trade itself may



not be essentially deadening, to permit a girl to be a purely mechanical worker in the trade, without an informing mind and a cultivated imagination, as Miss Addams has expressed it, leads inevitably to mental and moral stupefaction.

Not long since, a man of deep mental and spiritual insight said to the writer that he considered all legislation for making women's industrial life easier a mistake, because intolerable conditions in the factory and workshop will ultimately force women back into the home. Just where "back into the home" is, no one seems to know! With the industrial processes in which woman has worked from time immemorial taken from the home, the exhortation to stay at home and follow the example of her industrious grandmother seems a bit hard to follow. This fear, however, on the part of educators, this restiveness on the part especially of men concerning women and the trades, should not be altogether ignored, though part of it is due to plain cowardice in refusing to face things as they are. The few courageous leaders who are trying to work out an adequate system of vocational training for women feel that they need definite knowledge of the effect of industrial work upon her.<sup>1</sup> This can be supplied only by learning the specific needs and characteristics of the girl, the actual happenings in her working life, and the wants and demands of the employer, who, whether we like it or not, is bound to determine finally all plans for training the wage-earning girl. We can lessen his injustice and his lordship over conditions by refusing him skilled workers unless he agrees to reasonable terms; but we can never lessen his authority as to the actual work to be done and the method the worker is to pursue. Much patient study is needed. The immediate task is to bring together the employer and the educator, who for too long have walked apart when their path, which led to the making of the worker, should have been a common one.

The need for a mediary to bring about this coöperation is clearly felt at the present time. After a recent interview dealing

<sup>1</sup> Besides private trade schools, interesting experiments have been made in continuation and coöperative training in Boston, Chicago and Cincinnati. In Cincinnati, the coöperative plan inaugurated by Dean Schneider in the university has been remarkably successful.

wholly with educational questions, Mr. Hamerschlag, Director of the Carnegie Technical Schools, said to the writer: "Do you suppose your fund would consider establishing some center or bureau that would be able to furnish really definite information concerning the occupations of girls? Don't spend your time over present education—spend it in finding out what we should do! If some one could tell us as much about trades for women as the Anti-Tuberculosis League can tell us about that disease, we might accomplish better results. We simply do not know the effect of our present legislation upon women, or whether this or that trade means health, mental development, and reasonable pay."

The employment bureau must become, it seems to me, this mediary; it must give this help to the educator, to the employer, and above all, to the girl. It will undoubtedly demonstrate that many occupations in which women are now engaged are eminently unsuitable, failing entirely to reach the standard set by Miss Marshall that they shall "develop that kind of efficiency which will be of value to the woman as a home maker, and which will not be detrimental physically or morally."<sup>1</sup> By careful study authoritative knowledge must be gained of the girl's experience, and of the possibility of readjustment of methods by the employer. The few of us who have attempted such intensive work have uniformly found the employer willing to discuss such readjustment with us, because he realizes that we are honestly trying to furnish him with efficient workers and that we realize the difficulty of dealing with the individual. The industrial record of a girl covering a period of three or four years may show that she was a shiftless, inert, indifferent worker, and hence drifted from job to job. Here the distinct vocational function of the bureau must be brought into play, the girl's school record studied, and her temperament noted. She may be a "misfit" or she may need a stimulation which no amount of trade training will give, possibly a stimulation of the imagination by literature or history. If this girl could be released a few hours a week, or better, two days a week, from her employ-

<sup>1</sup> Florence M. Marshall: *Industrial Training for Women*, Bulletin No. 4 National Society for the Promotion of Industrial Education, p. 17.

ment, without the loss of pay which she cannot afford, she might be made into a valuable worker. Many employers are not averse to considering such an experiment. The records may show, however, not a shiftless worker, but one who has been laid off because of irregular work. This girl must have training for a skilled trade which is successful enough to give full employment to efficient workers. It is apparent that the contact of the bureau with the school must be exceedingly close. Perhaps here the bureau can help prevent the waste which is now so evident in the issuing of work certificates; the waste of opportunity for information concerning the girl and her work.

We are as yet too young in the field to state positively the outcome of the experiment. It is not an easy experiment and there are many possibilities of failure. But in any case it is better to fail trying than to be idly distrustful of the possibility of good coming out of the present conditions under which woman is living. The ignorant, the foolish and the cowardly are in despair because she is becoming base and sordid through the fate laid upon her by industrial evolution. They refuse to see that if she were assisted to a sane adaptation of her life to this fate, she would become only a finer and truer type of womanhood. And perhaps, heretical though it be to say so, it may be discovered that a woman who has missed opportunity for development through wifehood and motherhood, has often been able to reach the full fruition of her womanhood through wisely chosen work. To direct girls judiciously into vocations which may be theirs not for three or five years, but for life, and which may enable them, even without marriage, to fulfil the promise which their girlhood gave of a wise, tender, courageous womanhood, is in itself no mean task. As a precedent condition, the employment-vocation bureau, must help us to discover what is the best work for women to do, and under what conditions they can do it. It will thus aid them to perform that work intelligently, efficiently, and enthusiastically. Then, and then only, will come the just remuneration, the living wage for which women at present struggle in vain.

## THE CONSTITUTIONAL ASPECT OF THE PROTECTION OF WOMEN IN INDUSTRY

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### I

A BRIEF survey of the American legislation for the protection of women in industry will facilitate the discussion of the constitutional principles by which the action of legislatures is controlled. The following types of statutes should be distinguished:

1. Those which provide that no person shall be precluded, debarred or disqualified from any lawful occupation, profession or employment on account of sex. Illinois and Washington so provide by statute (making exceptions for military employment and public office), while California enacts the same principle in the form of an article of her constitution. A statute of this kind can at most have the effect of removing some supposed bar existing by virtue of law of custom. The statute of Illinois was in fact the consequence of a decision of the supreme court of that state which denied a woman a license to practise law, and against which the Supreme Court of the United States had been appealed to in vain.<sup>1</sup> The incorporation of the principle into the constitution will, on the other hand, control future as well as past legislation, and may prove an embarrassment in the way of carrying out other protective policies. The wording of the provisions does not seem to affect any possible disqualifications by reason of marriage and coverture.

2. Those which bar women from certain employments altogether. It is noteworthy that only five days after removing the disabilities of sex with reference to employment in general, Illinois prohibited the labor of women in coal mines, and the same prohibition is now found in the principal mining states

<sup>1</sup> Cf. *in re Bradwell*, 55 Ill. 535, *Bradwell v. Illinois*, 16 Wallace, 130, 1873.

(Indiana, New York, Pennsylvania, Washington, West Virginia, Wyoming). The other employment from which women are sometimes debarred (in about a dozen states) is the dispensing of intoxicating liquors. So under the liquor-tax law of New York (§31) no woman not a member of the keeper's family may sell or serve liquor to be consumed on the premises. In California, under the constitutional provision above quoted, an ordinance making it a misdemeanor for a female to wait on any person in any dance cellar or barroom was held invalid,<sup>1</sup> but later on an ordinance prohibiting the sale of liquor in dance cellars or other places of amusement where females attend as waitresses was sustained,<sup>2</sup> as was also the refusal of licenses to those employing females,<sup>3</sup> upon the ground that the clause of the constitution did not prevent the prescribing of conditions upon which the business of retailing liquor shall be permitted to be carried on. The court evidently felt that the object to be gained justified a narrow construction of the constitution.

3. Statutes which prohibit the employment of women in cleaning machinery while in motion, or in work between moving parts of machinery. Such legislation, according to the digest of labor laws prepared by the United States Commissioner of Labor in 1907, is found in Missouri and West Virginia.

4. Statutes which compel the provision of sanitary and other conveniences for females in industrial or mercantile establishments. Beside certain obvious requirements in the interest of decency, particular mention should be made of the legislation found in the great majority of states, under which seats must be provided for female employees and their use permitted when the women are not engaged in active duty.

5. Statutes which prohibit night work in various kinds of industrial establishments. They are to be found in about half a dozen states (Connecticut, Indiana, Massachusetts, Missouri, Nebraska). A corresponding provision of the law of New York was declared unconstitutional.<sup>4</sup> The only authority cited was the case of *Lochner v. New York*;<sup>5</sup> and it should be noticed

<sup>1</sup> *In re Maguire*, 57 Cal. 604.

<sup>2</sup> *Ex parte Hayes*, 98 Cal. 556.

<sup>3</sup> *Foster v. Police Commissioners*, 102 Cal. 483.

<sup>4</sup> *People v. Williams*, 189 N. Y. 131.

<sup>5</sup> 198 U. S. 45.

that at the date of the decision (June, 1907), the supreme court of the United States had not yet promulgated its very liberal views as to the power to control women's work which subsequently appeared in the case of *Muller v. Oregon*.<sup>1</sup> The New York Court treated the prohibition also as a sanitary measure exclusively, and did not advert to possible moral considerations. The decision stands, however, unrevoked, and the law of New York must be treated as annulled.

6. Statutes which in other respects limit the hours of labor of female employees. The establishments to which the laws apply vary, as they do in the case of night work, manufacturing establishments being the most common. The number of states having such laws has rapidly increased in recent years, there being now over twenty in all parts of the country, not counting those which apply only to females under age, or those which forbid only the compelling of work for longer hours. The number of hours is usually ten per day, often with a reduction for the total of the week, so as to make a shorter day on one day of the week; but sometimes also providing only a maximum number for the entire week.

## II

When we compare these statutes enacted on behalf of women workers with the general body of labor legislation, we note the almost total absence of any interference with purely economic arrangements: there is nothing analogous to store-order or weekly-payment acts applying to women in particular, nor any attempt to control the rate of wages. The most controversial field of labor legislation from the constitutional point of view has thus been avoided.

Health, safety and morals have always been undisputed titles of the police power, where it is a question of protecting the public at large. The control of the internal arrangements of the workshop in the interest of the employees, who, in theory, entered into it voluntarily, was the great extension of the power of the law achieved by the English factory acts. It is a strange

<sup>1</sup> 208 U. S. 412.



anachronism when we find American courts in the end of the nineteenth century questioning the legitimacy of restrictive legislation intended only for the benefit of the employed, who may be willing to assume the risk,<sup>1</sup> but it is true that it was not until after the middle of the nineteenth century that the English law sanctioned sanitary requirements on behalf of adult employes, and the singling out of adult women for the purpose of such protection met with opposition.<sup>2</sup> At present the validity of the sanitary and safety provisions of factory acts is, in principle, unquestioned, and opponents of such acts have to scrutinize them for constitutional defects in non-essential features. Where such provisions apply to women in particular it is generally because the danger or evil arises out of conditions peculiar to the sex.

The limitation of hours of labor is at present the most conspicuous phase of restrictive labor legislation. As applied to men, it has in general been confined to special occupations. In some cases the reason why they were singled out is not apparent. This is true of the laws of some southern states with regard to the employes of cotton or woolen mills, which have not been passed upon by the courts of last resort; in other cases, the inducing motive was the consideration of public safety, as in the limitation of hours of trainmen; in the remaining cases—those of miners and bakers—the legislation sought to justify itself as a measure for the protection of the health of the employes.

It is well known that there is a conflict of judicial opinion regarding the validity of this legislation, strongly emphasized by the vacillating attitude of the Supreme Court of the United States, which sustained an eight-hour day for miners and annulled a ten-hour day for bakers.<sup>3</sup> The inconsistency of these two rulings is particularly striking, since it is generally believed that the occupation of bakers is exceptionally unsanitary, and was singled out as such under the delegated powers of regulation committed to the federal council by the German trade code,

<sup>1</sup> *In re Morgan*, 26 Col. 415; *in re Jacobs*, 98 N. Y., 98.

<sup>2</sup> Hutchins and Harrison, *History of Factory Legislation*, p. 187.

<sup>3</sup> *Holden v. Hardy*, 169 U. S. 366, *Lochner v. New York*, 198 U. S. 45.

while the mining of coal under modern conditions is regarded as remarkably immune from occupational disease. In Colorado the eight-hour day for miners was declared unconstitutional.<sup>1</sup>

The difficulty which American courts have experienced with regard to the treatment of hours of labor is easily understood. They assume the existence of a constitutional principle which protects what is called the freedom of contract. This means that the state must leave the economic side of the labor contract to the free bargaining of the parties concerned; it means from the point of view of the employer that his business is not to be regulated by law in order to secure satisfactory terms to the employe, as the railroad business is regulated to secure fair terms to the shipper or the traveling public; from the point of view of the employe it means that he is free to make the most of his earning capacity, and to work as long as he pleases, or rather, conceding the limited sphere of the police power, as long as is consistent with proper standards of health and safety. The movement for the eight-hour day has, generally speaking, been frankly an economic movement, designed to advance the workman in the social scale, to give him time for recreation, culture, the enjoyment of his home, everything, in short, that is supposed to go with rational leisure, and it has generally been accepted as a principle of American constitutional law, that this consummation was not to be brought about by legislative compulsion. The state was to further the movement only in so far as it had the right to dictate the conditions of employment on work done for the public.

Notwithstanding the recognition of this constitutional limitation, there have at all times been large sections of organized labor who would have been glad to enlist the power of the law in the struggle for the shorter workday, and who would welcome any reduction on constitutionally valid grounds as a step in that direction. Hence the appeal for the eight-hour day on public works; and hence the appeal to the police power of the state for the purpose of shortening hours of labor.

There has always been greater difficulty in furnishing legal

<sup>1</sup> *In re Morgan*, 26 Col. 415.

protection against the risk of disease in industrial employment than against the risk of accident. The common-law liability of the employer for illness contracted by the employe in consequence of defective arrangements may be regarded as a negligible factor, owing to the difficulty of legally proving the cause of disease and to the operation of the doctrine of assumption of risk. It is only since 1906 that a statutory liability for disease has, within a very narrow range, been established in England, and such a thing is not even agitated in this country. For protection against occupational disease and its consequences our laws rely upon preventive regulation entirely. No system of protective devices, however, can banish altogether the baneful effect of certain occupations upon the general health and strength of the worker, and it is against these inevitable risks that reliance must be placed upon diminishing the amount of exposure, *i. e.*, reducing the hours of labor. This reduction is, of course, also the only remedy against the specific evil effects upon the human system of overexertion and fatigue.

A demand which has generally been understood to serve economic or social purposes may thus assume the character of a sanitary requirement, and the confusion of purposes is aggravated by the fact that of all sanitary risks that of a mere prolongation of effort under undesirable conditions is the least tangible, as well as the most variable according to individual constitutions, and that the legal maximum of duration of work must be more or less haphazard and arbitrary. The resulting difficulty in the application of constitutional principles is obvious. If the courts are expected to protect the freedom of contract, as the legislature is expected to protect the public welfare, can the mere enactment of a statute be accepted as conclusive as to the requirements of the public health and safety? Up to the present time the courts have not succeeded in evolving any definite theory with reference to this problem; it is a matter of speculation whether in a given case they will acquiesce in the legislative judgment or override it.

Toward legislation limiting the hours of labor of women the attitude of the courts has on the whole been favorable. Ten-hour laws have been sustained in Massachusetts, Pennsylvania,

Nebraska, Washington and Oregon, and the Oregon decision has been affirmed by the Supreme Court of the United States. Against these decisions must be set that of the supreme court of Illinois, rendered in 1895, declaring an eight-hour day for women to be unconstitutional. A ten-hour law, modeled upon that of Oregon, was enacted in Illinois in 1909, and a case involving its constitutionality is now awaiting the decision of the supreme court of the state.<sup>1</sup> The decision in the earlier Illinois case has been much criticized, and the opinion contains statements which at the present day would find the approval of few courts. Stripped of superfluous dicta, and reduced to its vital points, the decision stands for two things: that the adult woman is entitled to the same measure of constitutional right as the adult man, and that the court did not believe that an eight-hour day was a sanitary requirement even for women. "There is no reasonable ground," the court said, "at least none which has been made manifest to us in the arguments of counsel, for fixing on eight hours in one day as the limit within which woman can work without injury to her physique, and beyond which, if she work, injury will necessarily follow."

This skepticism should not cause great surprise or indignation. Notwithstanding the rapid change of opinion within the last two decades in favor of restricting the hours of labor of women, an eight-hour maximum day for women workers is even now unknown in America or in Europe, and in Germany it took eighteen years, from 1892 to 1910, to reduce the workday of female factory hands from eleven to ten hours. It is easy to understand that a compulsory eight-hour day in 1893 or 1895 should have appeared to the court as an unreasonable and even arbitrary interference with private rights. To say the least the case for such a measure had not yet been made out.

The limitation of the hours of women workers had become a part of English factory legislation as early as 1844. A factory report of the previous year had pointed out that women were physically incapable of enduring a continuance of work for the same length of time as men, and that deterioration of their

<sup>1</sup> Since this article was written the Illinois supreme court has declared the ten-hour law constitutional.—Editor.

health was attended with far more injurious consequences to society.<sup>1</sup> The need of hygienic protection had thus been brought to the attention of the legislature. At the same time the economic aspect of the measure appears to have been the more prominent. The men desired shorter hours for themselves, but thought an appeal to parliament hopeless; thus women and children were put forward in the hope, which events justified, that the legal reduction of their worktime would accomplish without legislation the same purpose for men.<sup>2</sup> The agitation was in fact conducted as one for shorter hours all around, although the bills as drawn did not include adult men. There appears on the other hand to have been some apprehension on the part of women that the men sought to impose restrictions upon them to make them less desirable employes and thus crowd them out of work, and for a long time the equal treatment of adult women and men was demanded by the leaders of the women themselves.

Factory legislation, as first conceived, was to apply only to those who were not free agents, namely to children. True, the married woman was not legally a free agent, but she was struggling for emancipation, which eventually came, and the female sex as such labored under no disabilities. Prominent economists urged that the state had no business to dictate to the adult woman the terms of her employment. But the exclusion of woman from underground mines paved the way for her subjection to state control, and the act of 1844 put her in the same class with children and young persons. The separate and distinct treatment of women thus became an established feature of English factory legislation.

In America the sanitary or hygienic argument in the movement for limitation of hours of female labor in factories was prominent from the beginning. The legislation in Massachusetts enacted in 1874 had been preceded by official investigations and reports concerning the detrimental effect of long hours upon the constitution of women. If woman was to be accorded the fulness of individual liberty and equality with man,—and barring

<sup>1</sup> Hutchins and Harrison, *History of Factory Legislation*, p. 84.

<sup>2</sup> *Ibid.*, p. 186.



the denial of the active political franchise, the tendency as manifested in married women's legislation and in admission to business and professional pursuits, was in that direction—a peculiar danger in her case from overwork and a special need of protection had to be made out.

In the earlier judicial decisions sustaining the ten-hour laws for women the existence of this special danger and need was rather assumed than supported by evidence. The argument for the Oregon law before the Supreme Court of the United States for the first time laid all stress and emphasis upon the documentary testimony which had been accumulated in scientific treatises and official publications, showing the evil effects of overexertion and overfatigue upon women employed in the monotonous routine of mechanical labor. In marshaling medical, social and economic, instead of legal authorities, Mr. Brandeis, the counsel for the state of Oregon, clearly recognized that if the principle of freedom of contract is to be accepted as part of the constitution, the validity of the limitation of hours of labor becomes a question of fact, which must be answered upon the basis of observation and experience. The same line of argument was presented still more elaborately (and again by Mr. Brandeis) in the Illinois case.

Attention was called to the extreme monotony of labor attending the minute subdivision of manufacturing processes, to the increasing strain of factory work due to the speeding of machinery, and to the general baneful effects, moral as well as physical, of overexertion and overfatigue. It is impossible to glance over the array of extracts from authoritative sources gathered from different countries without realizing that an entirely new light is thrown upon the subject of long hours in industry, with primary and specific reference to the work of women. A case for the exercise of the police power, even upon its most conservative basis, is made out such as had never before been presented when the validity of labor legislation was at issue. A showing of facts such as this might well induce a court to sanction state interference with the freedom of contract, while insisting to the fullest extent upon the same measure of constitutional right for women and men.



It is a remarkable fact that American constitutional law is still unsettled as to the constitutional equality of women with men, so far as liability to restrictive legislation is concerned. The few judicial utterances on the subject are conflicting. Illinois in the first case of *Ritchie v. The People*<sup>1</sup> made no distinction between men and women with reference to personal rights and the freedom of contract. New York is quite explicit: "Under our laws men and women now stand alike in their constitutional rights, and there is no warrant for making any discrimination between them with respect to the liberty of person, or of contract."<sup>2</sup> On the other hand the supreme court of Nebraska, in sustaining the ten-hour law, frankly speaks of women as wards of the state, and the passage in question is quoted with apparent approval by the supreme court of Oregon; and the Supreme Court of the United States, instead of planting its decision squarely upon the facts presented in the brief for the state of Oregon, mingles considerations drawn from physical conditions with others resting upon the general status of the female sex in such a way as to give an apparent preponderance to the latter. The court, speaking through Mr. Justice Brewer, said:

Still, again, history discloses the fact that woman has always been dependent upon man. He established his control at the outset by superior physical strength, and this control in various forms, with diminishing intensity, has continued to the present. As minors, though not to the same extent, she has been looked upon in the courts as needing especial care that her rights may be preserved. Education was long denied her, and while now the doors of the school room are opened and her opportunities for acquiring knowledge are great, yet even with that and the consequent increase of capacity for business affairs, it is still true that in the struggle for subsistence she is not an equal competitor with her brother. Though limitations upon personal and contractual rights may be removed by legislation, there is that in her disposition and habits of life which will operate against a full assertion of those rights. She will still be where some legislation to protect her seems necessary to secure a real equality of right. Doubtless there are individual exceptions, and there are many respects in which she has an advantage over him; but looking at it from the viewpoint of the effort

<sup>1</sup> 155 Ill. 98.

<sup>2</sup> *People v. Williams*, 189 N. Y. 131, 134.

to maintain an independent position in life, she is not upon an equality. Differentiated by these matters from the other sex, she is properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men and could not be sustained. It is impossible to close one's eyes to the fact that she still looks to her brother and depends upon him. Even though all restrictions on political, personal and contractual rights were taken away, and she stood, so far as statutes are concerned, upon an absolutely equal plane with him, it would still be true that she is so constituted that she will rest upon and look to him for protection; that her physical structure and a proper discharge of her maternal functions—having in view not merely her own health, but the well-being of the race—justify legislation to protect her from the greed as well as the passion of man. The limitations which this statute places upon her contractual powers, upon her right to agree with her employer as to the time she shall labor, are not imposed solely for her benefit, but also largely for the benefit of all. Many words cannot make this plainer. The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long-continued labor, particularly when done standing, the influence of vigorous health upon the future well-being of the race, the self-reliance which enables one to assert full rights, and in the capacity to maintain the struggle for subsistence. This difference justifies a difference in legislation and upholds that which is designed to compensate for some of the burdens which rest upon her.

We have not referred in this discussion to the denial of the elective franchise in the state of Oregon, for while it may disclose a lack of political equality in all things with her brother, that is not of itself decisive. The reason runs deeper, and rests in the inherent difference between the two sexes, and in the different functions in life which they perform.<sup>1</sup>

It is to be noted that the Supreme Court refuses to regard the non-possession of active political rights as a controlling element. Under a system which sets constitutional limitations against the popular will as expressed through the ordinary elective franchise, the treatment of the latter as relatively indifferent has a certain plausibility which would be much more doubtful in England or Germany. If the vote cannot secure shorter

<sup>1</sup> *Muller v. Oregon*, 208 U. S. 412, 421-423.

hours, it may be argued that the absence of the vote cannot be a valid reason for allowing the exercise of the power. If, on the other hand, shorter hours are demanded in the interest of the public, the bestowal of the franchise should not forfeit the benefit of the measure.

From a practical point of view, however, political power is an important, if not in the long run decisive, factor in the economic struggle, and as long as it is withheld from women they have a claim to special protection from the state, which they may put forward as a requirement of justice, without conceding that their status is naturally one of dependence and inferiority.

There is another argument in favor of a larger state interference with the freedom of contract in the case of women than in that of men, which has received little attention, but seems to deserve consideration.

The whole doctrine of freedom of contract is based upon a theory of constitutional equality which is frequently belied by the facts. What saves the theory from being altogether a fiction, is the possibility of contracting on something like equal terms through the power of collective bargaining. The doctrine of freedom of contract stands and falls with the efficacy of the organization of labor. If for any reason, such organization is impossible or ineffective, the right of the state to exert its power in favor of tolerable economic conditions cannot in reason be disputed, even though considerations of expediency or wisdom may make its exercise undesirable.

In the past, women workers have been greatly inferior to men in the power of effective organization. It remains to be seen whether this inferiority will be permanent. Considering the fact that most women enter industrial work as a temporary occupation which they expect to give up for matrimony, and that the care of the household and family is still regarded as their normal and proper function, it is not surprising that there should be much less opportunity and inducement for organization among women than among men. And if this should prove to be a necessary limitation, it would constitute a justification for the exercise of state control, which in the case of men may be found to be absent or to be confined to particular employments.

When we examine the labor laws of Massachusetts and other states, in which women are so commonly classed with young persons we might be tempted to conclude, that as on the one hand the state claims absolute control over children, and on the other hand is careful to respect the constitutional rights of adult men, there is manifested a consciousness of a power, not absolute, but transcending the normal measure, equally exercisable over those beyond the age of childhood and below full maturity, and over women. Upon closer scrutiny it will however appear that there are extremely few cases in which special legislation for women is of a purely economic character. The provision of the Massachusetts law<sup>1</sup> forbidding deductions from the wages of women (and minors) in case of the breakdown of machinery if they are refused the privilege of leaving the mill while the damage is being repaired, is one of the rare instances in point. Generally the common protection accorded to women and young persons is quite capable of being explained upon the basis of physical differences between adult men and adult women, and it is not therefore necessary to have recourse to the greater justification of special economic protection. The case may be somewhat different in English and German legislation.

From a constitutional point of view it makes a considerable difference whether the exercise of special power over the individual is based upon his supposed dependency and inferiority of right, or is due to special conditions in no way derogatory to his civil status. It is one thing to quarantine a smallpox patient, another thing to detain an alien at an immigrant station. When measures shall be proposed for the control of women in industry upon a principle different from any applied to men, it will be time to inquire whether she is to be measured by different and inferior political standards. The laws that have been so far enacted for women involve, with rare exceptions, no such discrimination.

The specific evil effects of long hours of standing upon female organs have long been recognized; so there is assumed to be a difference in nervous structure, and a greater suscepti-

<sup>1</sup>R. L., 106, § 69.

bility, in consequence of this, to the exhaustion of prolonged work. The indirect danger of diminished strength and vitality of possible offspring involves a supreme interest of the community at large, for which there is no parallel in the case of men, and which must satisfy the demands of the strictest constitutional constructionist.

The prohibition of night work in factories has in the case of younger women, at least, the justification of moral protection;<sup>1</sup> and while, upon an assumed constitutional equality of both sexes, such total prohibition is less easily explained as regards women of mature age, it is probably possible to establish a case of social or physical desirability of the restriction in their favor.

It might be said that the prohibition of women's work on specially dangerous machinery presents a case where the tutelary care of the state is simply pushed one step farther than in the case of men; but even here a specific danger is traceable; for it appears that the first provision of that kind in England was due to the suggestions of factory inspectors who pointed out to the parliamentary committee that the customary dress of girls and women made them especially liable to be caught by machinery.<sup>2</sup>

There are undoubtedly other matters in which protective legislation for women might be extended for reasons not involving any deficiency of constitutional status. Without indulging in speculation regarding social needs or moral dangers, we may point to the provisions of the German trade code, which recognize the special needs of working women. The right given to women who manage their household, to ask for an extra half hour at noon, if the period of noon rest is less than an hour and a half, is probably, like all other privileges made dependent upon special request, of little practical value. The rule that

<sup>1</sup> "The moral dangers of night work are so obvious that they need only be mentioned: the danger of the streets at night, going to and from work, association with all kinds of men employees at late night hours; the difficulty for women who are away from their families, of living at respectable places and entering at night hours; the peril of the midnight recess in establishments that run all night long." Josephine C. Goldmark, *Annals American Academy of Political and Social Science*, v. 28, p. 64.

<sup>2</sup> Hutchins and Harrison, p. 85.



women must not be employed after five o'clock in the afternoon on Saturdays and the eve of holidays, is, however, mandatory, and is likewise clearly dictated by a regard for household duties. Above all there is the prohibition of employment before and after confinement, altogether for eight weeks, the return to work requiring proof that at least six weeks have elapsed since confinement. In accordance with the recommendations of the Berlin Conference of 1890, England in 1891 likewise placed a restriction upon the employment of women for four weeks after childbirth, but the enforcement of the law seems to suffer from administrative difficulties.<sup>1</sup>

The present scarcity of similar legislation in this country seems to be due, not so much to constitutional doubts or difficulties, as to the fact that there does not appear to have been the same demand, or perhaps, owing to the less common employment of married women, the same occasion for such a restriction. Should the necessity for such legislation arise there ought to be no fear that the constitutions stand in the way of appropriate and adequate protection. Our present statutes by no means exhaust the permissible field of state interference.

### III

If the validity of some particular form of regulation for a particular purpose be conceded, another difficulty arises in determining the proper range and scope of the proposed law. The equal protection of the laws guaranteed by the fourteenth amendment does not demand a mechanical equality of treatment of all persons irrespective of the conditions of their occupation or employment; but this equality is inconsistent with arbitrary or partial discrimination. Ever since the Supreme Court of the United States declared the Illinois anti-trust law unconstitutional, because it made an exception from its prohibitions with reference to agricultural products or live stock in the hands of the producer or raiser,<sup>2</sup> there has been a feeling of uncertainty as to the extent of permissible classification. The tendency of the federal Supreme Court has been on the whole to

<sup>1</sup> Hutchins and Harrison, pp. 209-211.

<sup>2</sup> *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540.



concede to state legislatures a considerable latitude in the selection of objects of police restraint; but the risk of contest on this ground is a factor to be reckoned with in framing any restrictive legislation. Some of the states, as Illinois, are inclined to apply the principle rather strictly against the singling out by statute of certain groups, when other groups might be liable to similar dangers or evils.

The categories which we find mentioned in the American statutes restricting the hours of labor of women, are factories (by this or some other equivalent designation), mechanical establishments (not clearly differentiated from factories), mercantile establishments, laundries, hotels and restaurants. In most of the states having laws on the subject only some of these are covered. No law has as yet undertaken to regulate with particular reference to women either industrial home work or domestic or semi-professional service. Only one state (Oregon) includes the important transportation and transmission employments, especially the telephone and telegraph service, in which so many women are engaged, while Montana confines its restriction to the public telephone service. Up to the present time no law relating to women's work has been declared unconstitutional by reason of the specification of particular employments; the law sustained by the Supreme Court of the United States applied to manufacturing and mechanical establishments and laundries. It seems reasonable enough to differentiate these employments from those in which there is an element of personal service, such as waiting on customers or rendering direct assistance to the employer, and which are therefore free from the monotonous routine of purely mechanical work. It might be difficult on the other hand to justify the omission of such work as dishwashing or scrubbing in restaurants or hotels. Again, where the restriction applies to employment in mechanical, but not in mercantile establishments, a question might be raised concerning the clerical positions of both classes which are filled by women, and which are subject to different treatment, while not differing in the character of the work done. The difficulty can perhaps be avoided by construing the statute as applying only to mechanical employments in mechanical establishments.

Where, as in Missouri, the law is limited to cities above a certain size, it may be argued plausibly that the loss of time in going to and from work in large cities is apt to be considerable and may be taken into account in determining the territorial application of the law.

Another difficulty is presented by the demands created by conditions of emergency or an exceptional pressure of business. In condemning the New York ten-hour law for bakers, the Supreme Court of the United States referred disapprovingly to the absence of an emergency clause. On the other hand the constitutionality of the fifty-four-hour law for women of the state of Michigan is said to have been attacked on the ground that it makes an exception for employment in preserving perishable goods in fruit and vegetable canning establishments. Massachusetts allows a limited amount of excess work in seasonal industries, and the same is true under the German law.

The following comment by the New York commissioner of labor<sup>1</sup> on the New York law regulating the hours of women is instructive in this respect:

In its original bill form this act made an exception, adopted from the English law, in favor of factories manufacturiug perishable and seasonal articles or the products of such articles, and allowed them to employ females over 18 for sixty-six hours a week in not to exceed six weeks a year. Similar exceptions are contained in the laws of almost all the nations of Europe and are permitted by the recent international labor treaty signed at Berne. They are based upon necessity and equity and are consonant with health, for the reason that in such industries limited overtime during rush periods or seasons would be counterbalanced by reduced hours in slack periods or seasons. But the provision aroused such a violent public protest that it was temporarily abandoned. That was the cause of great regret to me, for I believe that the health provisions of our factory laws should be limited to the reasonable requirements of health, and that particular industries should not be unnecessarily and unreasonably embarrassed for the sole purpose of keeping a regulation general and uniform. In those industries where the supply of the raw material, the fitness of the material or the ability to work is determined by the weather, it is impossible to divide the week, the month

<sup>1</sup> *Report 1907*, p. 49.

and the year into working days or weeks of approximately equal duration, as our law presupposes; and it is not a necessary or even a reasonable health regulation that forbids time lost by such cause to be in any degree made up when the weather permits. Reasonable variations from the more regular limitations imposed upon those industries in which work is or can be made regular should be allowed for those in which it cannot. I do not want to be understood as condoning the excessive hours per day and per week that are now occasionally worked in those factories to which such an exception would apply. On the contrary they should be sharply restricted according to health requirements. But I believe that if those factories were allowed such variations from the general rule as would not be injurious to health, it would render the law more easily and generally enforceable as to them and would in fact reduce their hours of labor, and it would avoid the danger of an adverse decision from the courts as to the constitutionality of the provisions limiting the hours of women's labor.

It is not easy to see why any emergency provision should be regarded as in itself violating the principle of equality, but there may be some danger in not treating alike different emergencies which are entitled to equal consideration.

The absence of an emergency clause may expose the law to the charge of creating unnecessary hardships and thereby creating an unreasonable interference with liberty. If however in this as in other matters perfect justice and adaptation of means to the end might be thought to require a more minute differentiation than our statutes provide, it should be borne in mind that one very legitimate element in considering the reasonableness of a statute is the possibility or facility of its administration. A certain degree of mechanical uniformity of rules is essential to the successful operation of any act. Experience has demonstrated that it is extremely difficult to control compliance with legal limitations of hours of labor, if the permitted number of hours may be arranged at any time within a range of fourteen or fifteen hours, or if the employer is permitted to employ two shifts of working women, or if he is allowed to distribute 54 or 60 hours through the week as he pleases. On the other hand Dr. Jacobi quotes the labor commissioner of New York as saying: "Except for the administrative reason that it

makes it easier to enforce the prohibition against overtime, there is no present necessity in this state for the prohibition of night work by adult women. On the other hand, if enforced, it would deprive some mature working women, employed by night only at skilled trades, for short hours and for high wages, of all means of support. And the prohibition, in its application to factories only, seems rather one-sided when we consider that probably the hardest occupations of women, those of hotel laundresses and cleaners, are not limited as to hours in any way."<sup>1</sup> The relevancy of administrative considerations has received very little judicial discussion in connection with the problem of discrimination, and deserves serious consideration. While important rights should not be allowed to be sacrificed to mere official convenience, effectiveness and even the cost of administrative supervision should be regarded as legitimate factors in determining the reasonableness of restrictive measures.

The whole problem of discrimination depends so much upon the varying conditions of different industries that an intelligent judgment of what is legitimate and what is arbitrary is possible only upon the basis of a close study of facts. There ought to be some guaranty that legislation in this respect shall proceed upon a careful and impartial survey of all relevant conditions, and in the notorious absence of such guaranties, the courts may well demand to be convinced that discriminations are not arbitrary, and that the denial of exemptions is necessary from an administrative point of view. It is a further question whether it is possible for the legislature to do full justice to the varying needs of industries by making direct provision for all cases, or whether powers of dispensation or permit must not be vested in administrative authorities. Such powers should not go beyond the province of what constitutes, properly speaking, administration. As soon as they assume the character of subsidiary regulations, there arises a constitutional difficulty in the principle that legislative powers must not be delegated. A statute of California which left it to the judgment of the labor commissioner to determine whether the inhalation of noxious gases could be prevented by the use of some mechanical con-

<sup>1</sup> *Charities and the Commons*, v. 17, p. 839.

trivance, and if so, to direct its installation, was on that ground declared unconstitutional.<sup>1</sup> There are also, however, decisions sustaining the delegation to administrative authorities of the power to specify standards in pursuance of a general policy indicated by the legislature.<sup>2</sup> At present it is not clear to what extent the delegation of powers of regulation can be safely carried, nor is it probably in accordance with prevailing sentiment that it should extend to provisions that can be dealt with intelligently and effectually by legislation.

#### IV

Attention has been called to the conflicting views of the courts of New York and Illinois, and the federal Supreme Court, with reference to the constitutional rights of women. Similar differences may appear with regard to drawing the line between legitimate and arbitrary discrimination. It is important to observe that the more liberal view in favor of the legislative power held by the Supreme Court of the United States is not binding on the states. It is different where the state courts take the more liberal view. When the Supreme Court decided that a ten-hour law for bakers violated the fourteenth amendment, the New York law fell, and similar legislation in all other states was invalidated or made impossible. If the Supreme Court should decide, as it probably would, that the prohibition of night work of women does not violate the fourteenth amendment, the court of appeals of New York, while it might revise and overrule its own decision to the effect that such prohibition is invalid, would not be bound to do so, but would have the right to insist that the constitution of New York protects individual right against legislative power more effectually than does the federal constitution. And so it is well understood that the supreme court of Illinois, in passing upon the validity of the ten-hour law of that state, copied from the law of Oregon which

<sup>1</sup> *Schaezlein v. Cabaniss*, 135 Cal. 466.

<sup>2</sup> *Buttfield v. Stranahan*, 192 U. S. 470, standards of quality of tea; *Isenhour v. State*, 157 Ind. 517, minimum standards of food and drug preparations, defining specific adulterations; *Arms v. Ayer*, 192 Ill. 601, determining number and location of fire escapes.



the Supreme Court of the United States sustained, is not bound, though it may be properly influenced, by that decision; the federal authority is persuasive, but not controlling. This results from the fact that the fourteenth amendment was enacted as a protection against the abuse of legislative power, and is not concerned with legislative inaction or impotence, induced by the construction which the state courts put upon the state constitution.

In such cases the people of the state have it in their hands to remove the opposition of their judiciary, by amending their state constitution so as to permit the desired legislation. This was done in New York with reference to legislative control of labor performed in connection with state and municipal works, and in Colorado, with regard to hours of labor in specified occupations and other branches of industry which the legislature might deem injurious to health. So the new constitution of Michigan provides (art. V, § 29) that the legislature shall have power to enact laws relative to the hours and conditions under which women and children may be employed. If such constitutional amendment is adequately framed and the new legislation conforms to its provisions—in Colorado the supreme court held that an eight-hour law for women enacted after the amendment fell short of satisfying the requirements of the amended constitution<sup>1</sup>—there is nothing but the federal constitution that can be superior to the new law. If the federal Supreme Court has held that such a law does not violate the federal constitution, the construction must be binding upon the state court. True, if the state court should presume to place upon the federal constitution a construction more unfavorable to legislative power than the federal Supreme Court, there would be no possibility, under the federal statutes, of reviewing or reversing that decision, but it is almost inconceivable that a state supreme court should take such a position and override the most authentic and authoritative interpretation of the highest law of the land, provided by that law. As a matter of fact, such a course has never been taken, and need not be apprehended.

It is one of the dominant features of our constitutional sys-

<sup>1</sup> *Burcher v. People*, 41 Colo. 495. The reasoning of the decision is in some respects obscure, and the case cannot be regarded as typical.



tem that the nation, except for the regulation of interstate and foreign commerce, has debarred itself from the active and positive care of social and economic interests. The other great federated commonwealths of the world have more liberal provisions in this respect. Germany has assigned to the imperial power the whole subject of trade and industry; the Swiss constitution of 1874 mentions as subjects of federal legislation hours of labor and the care of health in factories; in Canada the Dominion is given residuary powers which cover the bulk of industrial legislation, and Australia by a wise provision allows any two or more of the states to refer to the federal parliament any matters to be regulated for the referring states jointly. The United States has by its constitution undertaken to safeguard individual right as an immunity from governmental oppression, but not as an immunity from private exploitation which falls short of reduction to practical servitude. Congress cannot enact protective measures for women in industry applicable to the nation at large. Its position is in this respect the same as with regard to child labor. It has been suggested that the United States might and should debar products manufactured by child labor from interstate or foreign commerce, and if this were practicable, women's work might be controlled in the same way. Such a legislative contrivance would violate the spirit, if not the letter, of the constitution, and on that account would meet with strong and legitimate opposition.

It is undoubtedly an anomaly, that our arbitrary and artificial state lines should stand in the way of such uniformity of industrial control as competitive industrial conditions may demand. A certain measure of unity may perhaps be achieved by the hitherto untried method of legislative agreements between several states, subject to the consent of Congress. But under the limitations of state constitutions, such unity would be a precarious thing, and its possibility has hardly been discussed.

Considering the action taken by the International Conference on Labor Regulation at Berne in 1906 in regard to the night work of women, the question suggests itself whether the treaty-making power might not be used for the purpose of securing national protection of women in industry. The Berne conven-

tion provides that the industrial work of women at night shall be prohibited, with a specification of the number of hours, and subject to certain exceptions particularly set forth. Suppose the United States had been a party to this convention, what would have been the effect? Under the federal constitution, the treaties are the highest law of the land, and treaties of the United States sometimes deal with subjects otherwise withdrawn from federal jurisdiction and belonging to the states, so especially with the right of aliens to hold land. But these treaty provisions are directly operative without further legislation. This does not appear to be true of the Berne Convention. For although the convention regarding night-work uses the word "shall be prohibited" (*sera interdit*) while the phosphorus convention says the parties "bind themselves to prohibit" (*s'engagent à interdire*), yet even the night-work convention leaves it to the signatory states to define what shall be regarded as industrial enterprises, and therefore is not operative without further legislation. For the United States the convention would therefore have been ineffective without the concurrent action of each state. Even however if a convention should create immediately operative restraints, they would probably be ineffective in practice without appropriate administrative arrangements, and these, under the constitution, can be provided only by the states. On the whole, the treaty-making power can hardly be relied upon to break down the barriers created by state autonomy.

Fortunately, however, the work of agitation and public education knows no state lines, and the national influences which are thus constantly operative cannot fail to produce a certain uniformity of legislation which will increase as the wisdom of restrictive or regulative measures approves itself by their success. In the work of public enlightenment, the federal government can and does bear its share, since the expenditure of national funds is not bound by the same limitations as the enactment of laws intended to bind private action, and since the constitution, through the provision for the census, lends a direct sanction to inquiries into social and economic conditions. For the present, these non-compulsory agencies must be relied upon as the main forces in the work of unification.

## THE ILLINOIS TEN-HOUR DECISION<sup>1</sup>

JOSEPHINE GOLDMARK

National Consumers' League

IT was a unique episode in the history of American labor legislation, when in February, 1910, two distinguished lawyers joined the state officials of Illinois in a defense of the ten-hour law before the state supreme court. Both gentlemen—Mr. W. C. Calhoun, the then newly appointed ambassador to China, and Mr. Louis D. Brandeis of Boston, who had won prestige in successfully defending a similar law before the United States Supreme Court two years earlier—gave their services, a free gift to the wage-earning women of Illinois, and to those of such other states as may establish by law the ten-hour day in industry, in consequence of the favorable Illinois decision.

The statute in behalf of which these two public-spirited lawyers appeared, at great personal sacrifice, was enacted by the legislature of Illinois in 1910, and restricts to ten hours the working day of women employed in factories, mechanical establishments and laundries.

Similar legislation has been in force in England since 1847, in Switzerland since 1877, in Germany since the early nineties, in France since the beginning of the present century. In our own country, Massachusetts enacted a ten-hour law as early as 1876, and the supreme courts of four states—Massachusetts, Nebraska, Washington and Oregon—as well as the Supreme Court of the United States itself, have sustained the constitutionality of such laws.

Why then should a measure, so long tested by human ex-

<sup>1</sup> [By special request of the editor, Miss Goldmark has prepared this brief comment on the Illinois decision, pointing out its practical lessons without discussing the legal points involved. As is well known to students of protective legislation, only the remarkable work of Miss Goldmark in collecting and marshaling the mass of evidence scattered in all sorts of documents both in this country and abroad made possible the briefs that resulted in the sustaining of both the Oregon and the Illinois law.—EDITOR.]

perience and so obviously necessary in Illinois, the third manufacturing state in the Union, require so earnest and determined a defense? The answer to this query is found in the favorable decision of the Illinois Supreme Court, handed down in April, 1910. It was the necessity of putting the case so strongly before the court that it might reverse its earlier decision of 1895. Fifteen years ago, the Supreme Court of Illinois in what is known as the case of *Ritchie v. The People*, held that no restriction whatever could be placed upon the working hours of adult women employed in manufacture. The earlier statute had established the eight-hour day for women employed in manufacture. It was held unconstitutional and void, as a violation of individual freedom of contract. The present statute establishes for the same classes of workers the ten-hour day. The same principle is involved in both laws, namely, that the working hours of adult women may be restricted by the legislature.

In its recent decision, holding that the ten-hour statute is a valid exercise of the police power of the state and is not in violation of the constitution of the state of Illinois, the supreme court lays stress upon two points: first, that the present statute is a health measure and is so described in its title and in its text, while neither the title nor the text of the former eight-hour law, annulled in 1895, specifically stated its relation to the subject of health; second, that the present statute permits ten hours' work in twenty-four, while the former one permitted but eight hours. These two points call for scrutiny and consideration. In future every ten-hour bill for women should be entitled a health measure, as in fact it is. This precaution costs neither time, money nor effort. Yet it may save the law when on trial before a court of last resort upon the charge of unconstitutionality.

The second point is more difficult. If in general the principle is accepted that statutes restricting the working hours of adult women must be obviously and convincingly health measures, then the enactment of future eight-hour bills and nine-hour bills might well be accompanied by the preparation of briefs showing the necessity for the statutory shortening of the work-

ing day as overwhelmingly as the Brandeis brief filed in the Illinois case proved the point in the present instance. The specific statement in the present decision that what judges know as men, they cannot profess to ignore as judges, emphasizes the need of presenting to them the underlying social and medical facts upon which legislation restricting women's working hours is fundamentally based.

The effectiveness of this procedure is shown by the experience of the past two years. In January, 1908, Mr. Brandeis filed with the Supreme Court of the United States, in defense of the Oregon ten-hour law, a brief of one hundred and twelve pages, showing the action and opinion of European nations and some American states governing the working hours of women in the interest of the public health. His oral plea on that occasion followed the same lines. The decision of the court, written by the late Justice Brewer, was unanimous, sustaining the statute and specifically stating that the court took "judicial cognizance" of the "facts of common knowledge" brought before them. In the recent Illinois case, Mr. Brandeis's brief contained more than six hundred pages of similar information gathered during the past year by the writer under an appropriation from the Russell Sage Foundation.

These two decisions pave the way for an immediate nationwide campaign for the ten-hour day for women employed in factories, mechanical establishments and laundries in all those industrial states which have not yet enacted such laws. A similar campaign is sorely needed in many states in order to extend to women in stores, offices, telegraph and telephone services, trade and transportation, the benefits already enjoyed by their sisters employed in manufacture.

The National Consumers' League has already enlisted for this campaign, placing well to the fore in its program for the decennial period 1910-1920 the enactment of such laws.

# A SELECTED LIST OF BOOKS AND PAMPHLETS IN THE ENGLISH LANGUAGE ON WOMEN IN INDUSTRY

COMPILED FOR THE WOMEN'S TRADE UNION LEAGUE BY

CAROLA WOERISHOFFER

EDITED BY

HELEN MAROT

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ABBOTT, EDITH. Women in industry; a study of American economic history. N. Y.: Appleton. 1909.

[The history of women in industry in the United States. Also the cotton, shoe, printing, clothing and cigarmaking trades in their relation to women.—Contains a bibliography.]

ABRAHAM, M. E. & DAVIES, A. L. The law relating to factories and workshops. London: Eyre & Spottiswoode. 1901.

[English law.]

American association for labor legislation. Proceedings of . . . annual meeting, 1907—date. N. Y.

AUSTIN, C. B. Administration of labor laws 1909. N. Y.: Am. assoc. for labor legislation. 1909.

BAYLES, G. J. Woman and the law. N. Y.: Century. 1901.

[Statements and summaries of different state laws relating to the employment of women.]

BLACK, CLEMENTINA. Sweated industry and the minimum wage. London: Duckworth. 1907.

BOUCHERETTE, JESSIE, and others. Condition of working women and factory acts. London: Stock. 1896.

[Purpose of the work is to prove that hardships result to women from trade unions and factory acts.]

BRANDEIS, L. D. Women in industry; discussion of the U. S. Supreme Court in the case of *Curt Muller v. state of Oregon*, upholding the constitutionality of the Oregon ten-hour law for women and brief for the state of Oregon. N. Y.: National consumers' league.

BRANDEIS, L. D. & GOLDMARK, JOSEPHINE. Brief and argument for appellants in the supreme court of the state of Illinois. N. Y.: National consumers' league.

[Legislation restricting the hours of labor for women, American legislation, foreign legislation, dangers of long hours, causes and

This list makes no attempt at completeness, the aim being to include only the most useful works in the field covered not included in the indices of periodicals.



- effects of fatigue, effect of hours on health, safety, morals and general welfare, benefit of short hours, remedies, regulations and restrictions.]
- BULLEY, A. A. & WHITLEY, MARGARET. *Women's work*. N. Y.: Scribner. 1894. (Soc. quest. of today ser.)
- [Treats of women and trade unions in the textile and other trades, influence of occupation on health, infant mortality, legislation.]
- BUTLER, E. B. *Women and the trades; Pittsburg 1907-08*. N. Y.: Charities publication committee. 1909.
- [The report of a full investigation of the conditions of work of women in Pittsburg.]
- CADBURY, EDWARD, and others. *Woman's work and wages*. London: T. Fisher Unwin. 1905.
- [Detailed analysis of conditions and wages of working women in the different trades open to them in Birmingham, England; together with suggested remedies for existing evils and descriptions of women's trade unions, girls' clubs, etc., in Birmingham.]
- CAMPBELL, HELEN. *Prisoners of poverty; women wage-workers, their trades and their life*. Boston: Roberts. 1887.
- [A record taken from life in New York.]
- (same). *Prisoners of poverty abroad*. Boston: Roberts. 1889.
- [Women wage-earners in London.]
- (same). *Women wage-earners*. Boston: Roberts.
- [Women as wage-earners in the past; conditions and wages in Europe and the United States; remedies and suggestions for evils. Includes a bibliography.]
- Canada. Department of labor. *Report of the royal commission on a dispute respecting hours of employment between the Bell telephone company of Canada ltd. and operators at Toronto, Ont.* Ottawa. 1907.
- [Report on a strike of women telephone operators.]
- CANDEE, H. C. *How women may earn a living*. N. Y.: Macmillan. 1900.
- [Consideration of various industries and the opportunities they afford women workers.]
- CHAPMAN, S. J. *The Lancashire cotton industry*. Manchester: University press. 1904.
- [Deals briefly with women in the weaving and spinning trades, the attitude of trade unions, the ratio of women workers in the cotton industry in 1838 and 1901.]
- COLLET, C. E. *Educated working women; essays on the economic position of women workers in the middle classes*. London: P. S. King. 1902.
- Fabian society. *Life in the laundry*. London: Fabian society. 1902.
- [Deals with unsanitary conditions, excessive hours, defects in legislation and legislative remedies.]
- FORD, I. O. *Women's wages and the conditions under which they are earned*. London: Reeves. 1893. (Humanitarian league pub.)
- Great Britain. Board of Trade, Labour Department. *Employment of women*. London. Eyre & Spottiswoode. (Great Britain. Parliament. Sessional Papers.)

- Report on the statistics of employment of women and girls, by Miss Collet. 1894.
- Report on changes in the employment of women and girls in industrial centres, by Miss Collet. 1898.
- Great Britain. Royal Commission on Labour. Employment of women. Reports on the conditions of work in various industries in England, Wales, Scotland and Ireland, by the Misses Orme, Collet, Abraham and Irwin. London. Eyre and Spottiswoode. 1898. (Great Britain. Parliament. Sessional Papers.)
- HANSON, W. C. Report of the work of the Mass. inspector of health, November 1907-1908. Boston; State board of health.
- HARRISON, A. Women's industries in Liverpool. Liverpool: Liverpool university press.
- HERRON, B. M. The progress of labor organizations among women, together with some considerations concerning their place in industry. University of Illinois studies, v. 1. Urbana: University press, 1905. [Unions specially considered: bakers', typographical, bookbinders', teachers', potters', lithographers', also garment, textile, glove, cigar, laundry, boot & shoe, building, metal workers'; also label leagues and Women's trade union league.]
- HUTCHINS, B. L. Home work and sweating, the causes and the remedies. London: Fabian society. 1907.
- HUTCHINS, B. L. & HARRISON, B. A. A history of factory legislation. London: P. S. King. 1903.
- Illinois. Bureau of labor statistics. Biennial report, 1892. Springfield. [Various statistical details referring to the work, wages and welfare of the working women of Chicago, employed in the factories and other industrial groups.]
- International association for labour legislation. Bulletin of the international labour office, 1906—date. London: Labour representation, printing and publishing co.
- (same). Bulletin of the international labour office. Supplement, bibliography. Jena: G. Fischer. 1909.
- IRWIN, M. H. Home work amongst women. Glasgow: Women's industrial council. 1901.
- JACOBI, ABRAHAM. Physical cost of women's work. N. Y.: Charity organization society. 1907.
- KELLEY, FLORENCE. Some ethical gains through legislation. N. Y.: Macmillan. 1905. [A chapter on the necessity for and the right to leisure; a chapter on shorter working hours through legislation.]
- London County Council. Report of the educational committee of the London county council, submitting report by the chief inspector presenting reports on women's trades compiled by the late inspector of women's technical classes (Mrs. G. M. Oakeshott). London: P. S. King. 1908. [Contains reports on artificial flower making, corset making, dress-making, lace making and mending, ladies' tailoring, laundry work,

millinery, photography, ready-made clothing, surgical instrument making, orthopaedic appliances, etc., upholstery and waistcoat making.]

MACDONALD, J. R. (Editor). *Women in the printing trades*. London: P. S. King. 1904.

[General consideration of women in the different branches of the printing trade in their relation to men, trade unions, industrial training, legislation and wages.]

MACLEAN, A. M. *Wage-earning women*. N. Y.: Macmillan. 1910.

[A study of women in leading industries in various parts of the country, being results of a national investigation conducted by the author under the auspices of the national board of the Y. W. C. A.]

MALLET, C. *Dangerous trades for women*. London: Reeves. (Humanitarian league pub.)

[The white lead trade and match factories.]

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National union of women workers of Great Britain & Ireland. *Women workers; papers read at the conference held in Manchester, October, 1907*. London: P. S. King.

[Women as skilled and unskilled workers; educated and married women; trade unions and coöperative movements among women.]

New York (State). Bureau of statistics of labor. *3d annual report, 1885*. Albany.

[Textual and statistical tables on working women compiled from the returns received from manufacturers and employers in New York.]

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[Describes different trades and professions for girls: stenography, salesmanship, trained and semi-trained nursing, dressmaking, library work, millinery, telephone operating, government work, manicuring, hairdressing, factory work, proof reading, etc. One chapter considers fully expenses of self-supporting girls in big cities.]

RICHARDSON, DOROTHY. *The long day*. N. Y.: Century. 1907.

[The experience of a woman in various occupations and her difficulties in earning a living.]

ROE, E. M. *Factory and workshop acts explained and simplified; with summaries of the workmen's compensation act, 1897, and the truck act, 1896*. London: Simpkin. 1897.

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[Contents: Regulation of women's work, by G. M. Tuckwell; Minimum wage, Constance Smith; Trade unionism, M. R. Macarthur; Infant mortality, May Tenant; Child employment and juvenile delinquency, Nettie Adler; Factory and workshop laws, G. M. Anderson; Legislative proposals, Clementina Black.]

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[Papers by various authors; deals with factory legislation in England and the colonies.]

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[Diary of an investigator; women's wages, women and the factory acts, regulation of hours of labor, the sweating system.]

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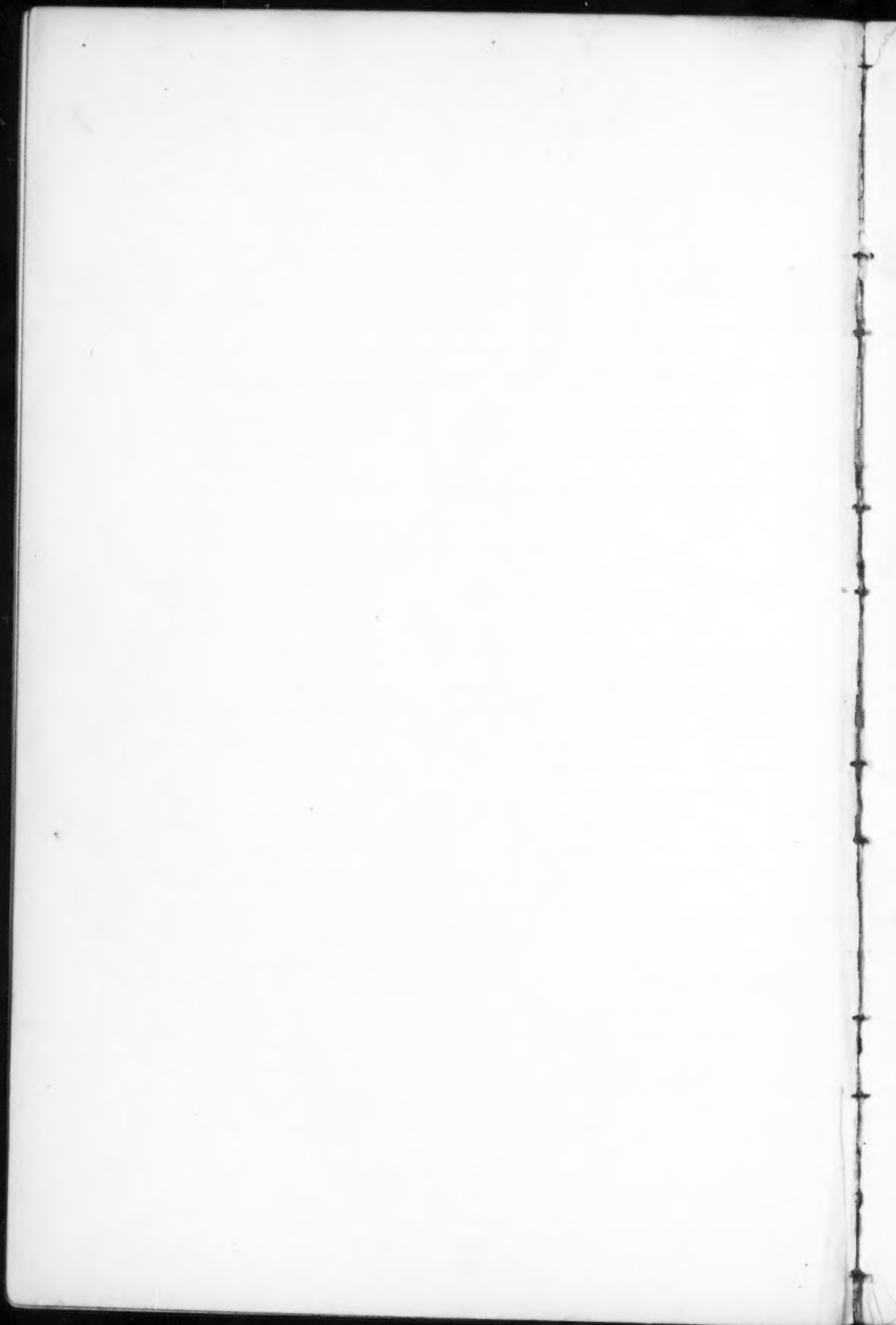
[Deals with unions in the following trades: printing, bookbinding, laundry, cigar, tobacco stripping, garment, music and telegraphy.]

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The annual reports of the state bureaus of labor, and state factory inspection departments; the bulletins of the U. S. dept. of labor; the economic journals and monthly periodicals contain some of the most important contributions to the literature of women in industry.





## THE SUCCESSES AND FAILURES OF THE FIRST AND SECOND BANKS OF THE UNITED STATES<sup>1</sup>

RALPH C. H. CATTERALL

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**W**RITING of the Second Bank of the United States, Professor Dewey says

It is difficult to find in the experience of this institution any lessons of importance which may be of special service in the preparation of a plan for a large national central bank at a later period, when business methods have been transformed by the railroad, the telegraph, and by the development of corporate enterprise, to say nothing of the change in banking law through the general substitution of national supervision for state control.

The point is well taken. Conditions to-day are essentially different from those which existed in the period covered by the life of either of the United States banks. Nevertheless, their history has at least this value for the advocates of a central bank—it proves the superiority of a central bank over any other system of banking then existing in the United States, and in some respects over any other system ever existing in the United States.

### I

In relating the successes and failures of the two banks, it must always be kept in mind that our knowledge of the operations of the first bank is exceedingly limited. This is due to the fact that almost all the reports of its operations have disappeared. Even Professor Holdsworth's account, although it tells us everything that is known about the first bank, does not permit us to

<sup>1</sup>Based on *The First and Second Banks of the United States*, by John Thom Holdsworth, Ph. D., and Davis R. Dewey, Ph. D. Washington, Government Printing Office, 1910. Publications of the National Monetary Commission, Senate doc. no. 571, 61st Cong., 2d session.

speaking with any certainty about most of its operations. In the next place, it must be remembered that in the different circumstances of the country at the different periods of their existence, the history of the two banks is very unlike. The second bank was established principally for the purpose of facilitating a return to specie payments after the suspension of 1814. The first bank never had any such task. The efforts necessary to perform it brought down upon the second bank the deadly hostility of the state banks, which were always in friendly relations with the first bank. Moreover, the number of these local banks was much greater during the period in which the second bank existed than it was before that period. Again, the second bank carried on larger operations and over a much wider territory than did the first. This is shown by the fact that the first bank possessed only eight branches, all of them on the Atlantic seaboard, while the second bank had twenty-five branches, many of them in the interior. The character of the business of the two banks was also very different. The first bank loaned for the most part to merchants in the great seaports who had duty bonds to pay; the second bank loaned much more extensively to merchants in the interior. Again, the population and wealth of the country in the second period were vastly in excess of that existing in the first period. It follows that the career of the second bank was essentially different from that of the first.

Still, in many fundamental particulars the history of the two was similar. Above all, in the methods necessarily employed in regard to the currency problem of the country the two banks were at one. The fundamental currency problem in both cases was to secure a sound currency by guaranteeing the continuance of specie payments. To do this, it was necessary to diminish the immense volume of state bank issues, thus putting an end to their depreciation and inconvertibility. Each of the United States banks was what Bagehot considers the Bank of England to be, the centre of a "single banking reserve system." This was so not because they held the specie reserves of the state banks, but because those banks never troubled themselves to keep any adequate specie reserves. Instead, they trusted to the United States banks to protect them in case of unusual demands

for specie. Since this was the case, the banks of the United States were compelled in their own interest to see to it that specie payments were not suspended. The second bank had a further reason for such solicitude in the existence of a charter provision which compelled it to pay twelve per cent interest per annum on all its obligations which it refused to discharge in specie on demand.

Hence the national banks were bound to exercise some control over the business and especially the issues of the local banks. Both of them did exercise such control. The means employed by both banks were identical, consisting, as Gallatin says, "in receiving the notes of all those which are solvent, and requiring payment from time to time without suffering the balances due by any to become too large." To do this the banks of the United States had to be creditors of the state banks. This they were enabled to be, first, because they received the government revenues as the depositaries of the government, and second, because of their possession of branches. As depositaries of the government they received immense quantities of state bank paper. These were then presented to the state banks for payment. In case control was exercised by a branch, it was done by issuing the notes of the branch in the neighborhood of a state bank, and receiving state bank notes on deposit for these issues. The branch then presented the state bank notes to the issuing bank for redemption. In both cases, the state bank possessed no means of obtaining branch bank notes to anything like the amount necessary to act as a set-off to its own issues. The state banks were not receivers of the revenue, and they could not get possession of any considerable quantity of branch bank notes because these served as an excellent means of remittance for individuals who wished to forward funds to other parts of the country. Persons holding state bank notes were always willing to exchange them for paper of the bank of the United States, while nobody wished to exchange notes of the United States bank for state bank notes. Consequently, the branches always had the means of checking the state banks, and exercised it.

The means at the disposal of the big banks were efficient to

meet the end in view, but it must be noted that their employment forced both the big banks and the little ones to determine the volume of their discounts and loans, and the amount of their issues, by a consideration which had nothing to do with correct banking. The banks should have discounted with no other consideration in view than the need of the business community for banking facilities. This was not done, and in so far the entire banking system of the day was a mistaken one. This does not detract from the banks' success, however, in solving what after all was the most important problem in the currency situation so far as the people of the United States were concerned, namely, the possession of a sound and uniform currency. Moreover the policy of the banks secured a national currency in the place of a large number of local currencies. The existence of these numerous state bank currencies was one of the insuperable difficulties of the government and the people when no bank of the United States existed. State bank paper being payable only where issued, it follows that there was no medium common to the entire country except during the existence of one or the other of the big banks. Not only so, but the state bank issues were badly depreciated when distant from their places of issue. As a consequence, the government lost large sums of money in handling this paper. So did individuals, most of them having no means by which they could present the notes for redemption. The Banks of the United States furnished their own notes, which circulated from one end of the country to the other, and by their plan of checking state bank issues confined the latter to the neighborhood of their place of issue. The paper currency of the United States was sound and uniform under these conditions. The paper of the United States banks was an excellent currency. All their notes were receivable at Philadelphia, as well as at the issuing office; they were all receivable in payments to the United States; five-dollar notes were usually received by any branch, no matter where issued, and all notes were receivable on deposit. Meanwhile the state bank issues were restricted in quantity and kept within the localities where they were issued. Nor was this all. The paper was fairly elastic, being issued in answer to the demands of

borrowers who needed it to transact legitimate mercantile business, and ceasing to circulate when these transactions were completed. It can be asserted truthfully that the people of the United States at these periods possessed a paper currency which was decidedly superior to any other existing in the United States before the establishment of the present national banking system.

Another success of first importance on the part of the second bank was secured in the field of inland exchange. By its purchases of inland bills it furnished the farmers and merchants of the west and south with loans at a cheaper rate than could be supplied by the local banks. It could do this as a consequence of its branch system and its large capital. That these means made it possible to loan money cheaply in these sections would seem self-evident. Nevertheless, the fact of its furnishing cheaper accommodations in exchange, cheaper than the state banks in the west and south was denied at the time. But the experience of borrowers in those sections after the expiration of the charter of the second bank proved conclusively that they received better rates from the big bank. The Kentucky banks, for example, at once raised the rate of inland exchange to five per cent, though the rate of the Bank of the United States had usually been one per cent, and never over two and a half per cent. The Kentucky banks justified their action, when objection was made, on the ground that they could not make arrangements "with collecting banks in the south to furnish drafts at any definite rate or at any fixed time after collection." Moreover, the funds of the bank buying the bill had frequently to lie idle at the collecting bank because drafts upon the east could not be procured, and these were the only means of transfer of funds allowed by the collecting bank at New Orleans. Hence a loss of interest on the funds. Under the circumstances the Kentucky banks argued that five per cent was not too high a rate. They could not deny, of course, that this was a much heavier burden upon trade than before. Moreover, they admitted that the Bank of the United States had given better accommodations; but that, they said, was due to its national character.



This was the correct explanation. The Bank of the United States did not need to make arrangements with other banks to collect its bills or furnish other drafts, since all the transactions connected with its exchange operations took place through its own offices. Nor did its funds lie idle, for there was always use for them at some one or other of its offices, and if they were not needed where they happened at the moment to be, they were transferred without delay to places where they were needed. It is evident that in this respect the old bank of the United States was vastly superior to the state banks, or indeed to any system which does not include branches. It is equally evident that the purchase of inland bills at a low rate was of enormous benefit to merchants and farmers in the south and west, and a very important means in aiding the development of that country. "It is undoubtedly true," says Dewey, "that one of the chief services of the bank to the commercial world lay in its ability to furnish exchange at low and fairly uniform rates." It is quite as true that similar advantages would be afforded to-day by a central bank with branches.

The services of both banks of the United States as government agencies were never denied. Gallatin said over and over again that the first bank furnished a safe depository for the government, that it transmitted the treasury funds from one part of the country to another "instantaneously," and that it greatly facilitated the collection of the revenue. It must be added that the first bank was not bound by its charter to transfer the treasury funds without recompense. In 1800 the government passed an act authorizing the bank to hold the public deposits, and after this the bank did transfer the funds without charge. The same arrangement existed in the case of the second bank and was provided for in its charter. It was bound to transfer the public funds within the states and to distribute them to the public creditors without making any charge for the service. It was also required by a later law to act as commissioner of loans and as pension agent for the United States.

The actual services of both banks were briefly as follows:

1. They received and kept the revenues of the government.
2. They transferred the government funds without charge within



the limits of the United States. 3. They disbursed the government's funds to the holders of government bonds when these were paid off. 4. They disbursed the pension fund. 5. They acted as commissioners of loans for the government. All this was done without expense to the government.

The government also enjoyed the advantage of having a safe depositary for its funds. These were placed in the offices of the bank by collectors of customs and taxes, by postmasters and by land-office agents. The bank then became immediately responsible to the secretary of the treasury for every cent thus deposited. Secretary Woodbury, a bitter enemy of the second bank, admitted that the government never lost a dollar through the agency of the Bank of the United States, whereas it is well known that it lost considerable sums both when these funds were deposited in the state banks and when it undertook to care for them itself, without mentioning the expenses necessary for taking care of them even when no loss was incurred. Certainly the banks of the United States furnished the safest and the cheapest depositaries of government funds that this country has ever known.

The greatest usefulness of the banks to the government consisted in the transfer of the public funds. The revenues of the government were deposited in the offices of the bank, and were then subject to the draft of the treasurer. He was bound, however, to give notice to the bank so that it might have time to make the transfers without embarrassment to itself. This was done by sending to the cashier a weekly list of drafts drawn by the government, and after June, 1829, a daily list of the government warrants issued, stating the sums which the government needed, the places at which it needed them, and the times of payment. The bank then met the needs of the treasury without inconvenience to itself or expense to the government. In this respect the banks of the United States were the cheapest and best agencies the government ever possessed. Without them it has always been compelled to pay for its transfers, whether these were carried out by itself or by state banks. Yet the bank frequently made money by the transfers. This was the result of its branch system, its extensive issues of notes

which were current from one end of the union to the other, and its system of inland exchanges. No state bank possessed any of these advantages, nor is it possible to secure them except through the medium of a great central bank with branches.

A further advantage of the handling of the funds by the banks is to be found in the effect upon the business community. Under the present system of keeping the government funds, large sums of specie are frequently locked up in the treasury instead of being at the service of the commercial interests. Again, in the payment of the public debts, large sums are frequently thrown upon the market at a time when they are not needed. During the existence of the banks of the United States these difficulties were not experienced. The bank held the government deposits, and employed them in the discount of business paper, thus keeping them in use by the community. Again, when payments had to be made on account of the public debt, the banks discounted long beforehand on the receipt of the bonds to be redeemed, which were deposited by merchants to secure their loans. Thus the payment of the debt was gradual.

From what has been said, it will be apparent that the successes of the banks of the United States depended first of all upon the system of branch banks connected with the parent office at Philadelphia. It was through the possession of these that they were able to create a sound and uniform paper currency, to restrict the over-issues of state banks, to furnish an elastic currency, which was issued only at the demand of merchants on the security of business paper, and which was retired when the transactions upon which it was based ceased. It was through their branches that they were able to establish a system of exchange which furnished cheap loans to the south and west. It was thus that they were able to meet any legitimate demand for loans in any part of the United States where they had branches. For the branches kept the bank management informed as to the localities where money was needed, and a transfer of funds could take place to those localities at once. This is an advantage which no bank without branches can possibly have. Not only so, but the loans so furnished

were at a lower rate than was possible under any other system. This is another great benefit of a bank with branches. It tends to equalize the rate of exchange in different parts of the country.

## II

We may now consider the failures of the banks, failures which in some cases were due not so much to the banks as to the conditions of the day. The first and most serious of these was the failure of these banks of the United States to secure an arrangement with the local banks by which the two systems might act in unison in the face of a threatened panic. This criticism will apply more specifically to the second bank, for the first bank of the United States did have agreements at times with the great state banks. This was due to the small number of the state banks at the time, and the excellence of their management. When the second bank was in existence, the state banks were much more numerous and scattered, while their management was by no means impeccable. Moreover, the hatred of the state banks for the second bank would have made any agreement impossible. In any case, no such agreement existed. No concerted action was possible. The result was that there were constant flurries in the money market, and in time of panic, the banks generally refused accommodations, thus intensifying the panic instead of checking it. A difficulty of this sort probably would not arise to-day, and certainly not if there existed a large central bank with the duty imposed upon it of safeguarding the financial interests of the country.

Another failure sprang out of the banks' efforts to check the issues of the state banks. As a consequence of this effort, the banks were compelled to trade in the same localities as the state banks. This is particularly true of the second bank, which did a very large business in the south and west. But it was extremely difficult to do legitimate banking in these sections, because the need in them was not for banking facilities, but for capital, for long loans on the security of real estate. The bank was not able to avoid these difficulties. Much of its capital in the latter years of its existence was tied up in accommodation

paper at long dates in these distant offices. This was bad banking. In case of a panic, the bank would have found itself in a very dangerous situation indeed.

Another failure in the case of both banks was their inability to make their note issues strictly convertible. The first bank never made any effort, except for a brief period, to pay all its notes at any and all its offices. Consequently, they were slightly depreciated when at any great distance from the branch which issued them. The case of the second bank was similar, though that bank for most of its existence did redeem its five-dollar notes at all its branches, no matter where issued. The depreciation was always small, and frequently did not affect the mass of the people, since the smallest denomination of the bank's paper was receivable at par wherever there was an office of the bank, and all the notes were receivable at par in payments to the government.

The failure which most affected the interests of the second bank was the failure to control its offices. Whether such a difficulty existed in the case of the first bank it is impossible to say. The managers of the second bank, however, frequently found it impossible to control the branches in the policy followed in regard to loans and issues. The difficulties in the way of adequate control were probably insuperable at that time. The central office could not determine minutely the policy which was to be pursued by the branches. That had to be left to the local directors, who alone were sufficiently acquainted with the business men and the business needs of their localities. Moreover, the lack of railroads and telegraph lines made it impossible for the central board to act with the necessary promptness in sending instructions. Consequently, only a general line of policy could be indicated to the branches, and then their managers had to be left to carry it out in their own way. Often this way was directly opposed to the instructions sent. Occasionally the local directorates set the parent board at defiance, and carried out their own policy in direct violation of specific orders. This was true even when the offices were subject to the most stringent supervision, which was exercised only in the last half of the bank's existence. Thus at Hartford, in 1826, the branch

management disobeyed orders, and lost a large sum of money as a consequence. There were similar cases of disobedience at Pittsburg, Portland, Portsmouth, Nashville, New Orleans, Lexington, Louisville, and even at an office so close to the central office as the New York branch. The consequence was a large amount of bad banking, especially at the western and southern offices.

The cause of the failure to control the offices lay almost entirely in the circumstances of the day. The difficulties of communication, as already pointed out, made it impossible to exercise sufficient control. But above all, it was impossible to secure intelligent men for the local directorates, who knew anything of legitimate banking methods. This was the great difficulty. To-day none of these causes of failure exist. Even at that time, provided the branches had been in closer proximity to the central office, it is altogether likely that adequate control would have been exercised. The experience of the Indiana Bank, founded in 1834, shows that such control was possible.

The value of a great central bank possessing branches would be much greater now than in the earlier history of our country. To the government it would furnish a convenience not otherwise obtainable in safeguarding and transferring the public funds. It would undoubtedly be able to furnish banking facilities in small communities where to-day this is scarcely possible and thus would tend to equalize the rate of interest throughout the United States. Such a bank as the holder of the single specie reserve of the country would make panics like that of 1907 impossible; it might issue notes on the basis of assets, and thus furnish an elastic currency which would avoid all the drawbacks of present national bank issues. In a word, a great central bank with branches is probably the only institution which will meet the present banking needs of the United States.



## LESSONS OF STATE BANKING BEFORE THE CIVIL WAR<sup>1</sup>

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IN recent discussions of currency and banking reform, too much attention seems to have been given to foreign systems and practise, too little to our own past experience. Our century and a quarter of banking history affords as many valuable lessons of success and failure as the same period of other countries, and in some respects these lessons are more reliable guides because they are based upon our own peculiar conditions and needs. In the United States, we have experimented with every type and variety of currency and banking and our present dual system of national and state banks is but the evolution of earlier types. The fiscal exigencies of the Civil War checked the process of evolution, and fastened upon the country the incubus of a cumbersome and unscientific banking system. But for this check it is highly probable that some such organization as the free banking system of New York, the model upon which the national banking system was largely built, with such modifications as experience should dictate, would have spread throughout the entire country.

The studies of *State Banking before the Civil War* and *The Safety Fund Banking System in New York 1829-1866*, prepared for the National Monetary Commission by Dr. Davis R. Dewey and Dr. Robert E. Chaddock, trace our most important banking experiments before the establishment of the national banking system. It is the purpose of this paper to review some of these experiments, and to deduce from them some lessons

<sup>1</sup>Based on *State Banking before the Civil War*, by Davis R. Dewey, and *The Safety Fund System in New York*, by Robert E. Chaddock. Washington, Government Printing Office, 1910. Publications of the National Monetary Commission. (Senate doc. no. 581, 61st Cong., 2d sess.)



which appear to be pertinent to present-day discussions of banking and currency reform.

The history of state banking before the civil war is largely a history of various plans for issuing notes. Deposit currency, which plays so large a rôle in modern business, constituted only a small proportion of the circulating medium of the country until nearly the close of this period. Bank "bills" formed the bulk of the currency and, in numerous instances, particularly in the "wild-cat" period, banks were established for the sole purpose of issuing notes, with little or no thought of redeeming them in coin. As Knox aptly remarks in his *History of Banking*:

The creation of wealth by means of bank notes was the great heresy of the period between the years 1811 and 1861, as the creation of wealth by government issues and fiat has been the chief financial heresy since that date. . . . The idea that credit money, instead of being an instrument of wealth was in very truth wealth itself, had taken a strong hold on the minds of the public, and legislators could not get over the notion that by chartering banks with capital created by the state, or permitting individuals to start banks on capital which was only capital by courtesy, they were increasing the wealth of the public by the exact amount of the bank notes issued.

Prior to the establishment of the First Bank of the United States in 1791, there were but three banks in the country, the Bank of North America in Philadelphia, the Bank of New York in New York, and the Bank of Massachusetts in Boston. The Bank of North America was chartered by Congress in 1781 to give financial support to the Revolution. The government subscribed \$250,000 of the \$400,000 capital, but extreme financial need compelled it to sell its holdings in 1783. Though planned by Morris primarily to aid in financing the Revolution, it did a considerable business in the discount of commercial paper. It issued notes which were redeemable in specie on demand, and which provided an ample circulating medium.

The Bank of New York and the Bank of Massachusetts were established in 1784, the latter under charter from the state. The Bank of New York was started as a private bank and did

not receive a charter until 1791. Upon the establishment of the First Bank of the United States under government auspices, several other banks arose intended to be to the respective states chartering them what the First Bank was to the federal government. The privilege of banking was originally regarded as a monopoly under exclusive rights granted by the government. Both federal and state governments granted bank charters; but while the federal government licensed only one at a time, the states extended the privilege to many institutions, each under an individual charter adapted to local conditions. There was no principle of cohesion in the system, and no uniformity in administration and control.

The attempts which were gradually made to regulate banking reflect the state of public opinion at different times and in the different states. One of the most important regulations was concerned with the issue of notes. In 1792 a law was passed in Massachusetts providing that a bank's outstanding notes and loans should not exceed twice its paid-in capital. The charter of the Bank of New York limited its debts, over and above the money on deposit, to three times the paid-in capital. This restriction was intended to guard against undue expansion of both debts and credits. Later the law was changed to provide that neither debts (except for deposits) nor credits should exceed twice the capital. The same distinction between deposits and notes was recognized in the charter of the First Bank of the United States, which provided that the debts of the bank, except its deposits, should not exceed the capital.

In this day of indiscriminate blending of commercial and financial banking, stress may properly be laid upon the restriction in the charter of the Bank of Massachusetts, which prohibited it from dealing in bank stocks. The lessons of the panic of 1907, however, are too recent to necessitate particular emphasis upon the possible dangers of pyramiding banks. The Bank of New York was prohibited from holding real estate except for its own accommodation or in settlement for debts previously contracted. This restriction has generally been regarded as wise and sound and has obtained in all epochs of our banking history, including the period of our present national banking system.

One other restriction in the charter of the Bank of New York is worthy of notice, namely, the clause prohibiting it from trading in the stocks of the United States or any state. Because of the facility with which government, state and municipal bonds can be turned into cash, these forms of investment for a part of a bank's funds are very properly regarded as highly valuable, and in general they are as safe as they are serviceable. But this restriction upon the Bank of New York, repeated in a measure in the charter of the First Bank of the United States, is important as marking the earliest attempt to separate government and banking. Unfortunately, the point of this lesson was lost upon the framers of subsequent banking and financial legislation, and though at times, particularly with the establishment of the sub-treasury system in 1840, efforts were made to divorce government from banking, this highly desirable result has never been consummated.

The First Bank of the United States was established in 1791 as a part of Hamilton's scheme to strengthen the new federal government. While Hamilton appreciated the services of a powerful national bank to the commercial interests of the country, and to the community at large as a regulator of the currency, he regarded it primarily as "an indispensable engine in the administration of the finances." The bank was eminently successful in the discharge of both these functions, and abundantly justified the predictions of its founder. As to its issues, the charter provided that the bank should not become indebted, except for deposits, to an amount greater than its capital stock. This meant substantially that it might issue notes up to the amount of its capital. At no time, however, did the total volume of notes outstanding exceed \$6,000,000 against a capital of \$10,000,000, and they were always immediately redeemable in specie. The fact that they were receivable in payment of public dues so long as they were kept payable in coin, gave them a far more extensive circulation than those of any other bank. Moreover, as the fiscal agent of the government, the bank in collecting importers' bonds refused to accept the notes of banks which did not redeem them promptly in specie. By adhering to the rule of presenting for redemption

the notes of other banks, it brought the bank currency of the entire country up to a high standard, albeit it incurred the enmity of many banks in so doing.

Opposition to the recharter of the bank in 1811 was largely political. The government had gone into the hands of a party opposed to that of the bank's organizers. It was denounced as unconstitutional and undemocratic. Gallatin's defense of the institution brought upon it the enmity of his political foes, and in the last stages of the struggle for recharter, some of the state banks, which had been kept by the influence of the big bank in the straight and narrow path of banking rectitude, combined against it.

The year following the dissolution of the First Bank of the United States, the government was plunged into the war of 1812 leaning upon the state banks. The government funds were deposited in these banks, which had sprung up in large numbers all over the country. With the removal of the steadying influence of the Bank of the United States and the check upon redemption of their notes, an enormous expansion of issues had followed. By 1814, all the banks south of New England had suspended specie payments. The government defaulted on the interest of the public debt, and treasury operations were paralyzed. Bank notes circulated only at a discount, varying in value with the character of the bank issuing them. The entire country was in financial chaos.

In this extremity, attention was directed to the establishment of a national bank for the purpose of restoring order in the currency, and of bringing about the resumption of specie payments. Accordingly in 1816 the Second Bank of the United States was established, modeled closely upon the First Bank. The government subscribed one-fifth of the \$35,000,000 capital, payable in notes, and appointed five of the twenty-five directors. The bank was to be the depository of public funds, unless the secretary of the treasury should otherwise direct. Notes were to be issued in no smaller denominations than \$5, and they were receivable for all debts to the government. All obligations, deposits as well as notes, were redeemable in specie under a penalty of twelve per cent for failure to do so.

The regulation requiring the deposits to be paid in specie was a notable step toward sound banking. There was a universal idea that while notes should be redeemable in specie on demand, deposits might be paid in the notes of other specie-paying banks. The consequence was that two kinds of currency circulated everywhere: (1) the notes of the local banks which were at par with specie; (2) the notes of other banks which were at a discount, greater or less according to the expense of redeeming them. The new regulation, though it did not entirely prevent the circulation of the poorer grade of notes, abolished it so far as the Bank of the United States was concerned, and set a standard of good banking which "reached its fulfillment in the Suffolk bank system a few years later."

After the first few years of mismanagement, the Second Bank of the United States attained a position of soundness and prosperity. It accomplished the purpose for which it was created, bringing about the resumption of specie payments and establishing a sound currency for the whole country. It gained an enviable reputation for sound banking and business probity both at home and abroad. The story of the wreck of this proud and prosperous institution through political strife is too well known to need recounting here.

Despite the vast changes that have come in the organization of business and in the general supervision of banking it seems to the writer that some of the lessons taught by the experiments of these early banks are entirely pertinent to present-day discussions of reform. The problem has changed, perhaps, but the principle endures.

In the first place, then, it may be recalled that though both the First and Second Banks of the United States were sound, conservative institutions, instrumental in securing to the country a safe and uniform currency, and in raising the standard of banking to a high level, yet they became involved in political entanglements which accomplished their downfall. Moreover, the very success and magnitude of their operations, coupled with their fiscal relations to the government, excited the envy and opposition of state banks, and aroused in the public mind the fear of monopoly subversive of the public interest. Op-



ponents of the central bank idea insist that similar opposition and distrust would attend any central bank plan that might be proposed today. Just as the Second Bank of the United States in its effort to establish a sound currency in 1817 clashed with local and selfish interests, so, it is argued, a central bank as an agent for the readjustment of present banking conditions would inevitably clash with the existing 25,000 state and national institutions.

On the other hand, it is believed that the task of a central bank today in securing elasticity of bank notes, mobility of reserve, and cohesion in the entire banking system would impose upon it no heavier burden than was laid upon the Second Bank of the United States in 1817. Past experience teaches, too, that a powerful centralized institution with branches in different parts of the country, greatly simplifies the vexed problem of domestic exchange. The history of the two banks of the United States contrasted with that of the sub-treasury system, which has ever proved a disturbing factor in the banking situation, demonstrates the necessity of divorcing fiscal and business activities. Above all, the history of this period teaches the plain lesson that only through some centralized, dominant control can unity, cohesion and solidarity in banking be secured.

The period following the downfall of the Second Bank of the United States and preceding the establishment of the national banking system is marked by three notable experiments—the Suffolk bank system, the safety fund system, and the free banking system. The origin of some of these movements reaches back into the period of the Second Bank, but their full development comes later. The removal of the check upon state bank issues occasioned by the passing of the national bank, and the hope of obtaining deposits of public funds led to a large increase in the number of banks and an enormous inflation of both notes and discounts. As early as 1813 the banks of New England, in the absence of legislative restriction, undertook to regulate note issues, after the manner of both banks of the United States, by compulsory redemption. The notes of country banks, which comprised a large proportion of the currency even in the cities, circulated at a discount ranging from one to



five per cent. The New England Bank of Boston, established in 1813, started the movement for better conditions by agreeing to receive the notes of country banks and send them home for redemption, charging only the actual cost. Dewey records that this policy brought discounts down to from one-fourth to three-fourths of one per cent, and reduced the circulation of outside banks.

In 1819, however, the Suffolk Bank of Boston adopted a plan of redemption designed to abolish the discount entirely and at the same time to yield the bank a profit. It offered to redeem the notes of any country bank at par on condition that the issuing bank should keep a permanent deposit of \$2,000 or upward, according to its capital, in the Suffolk, the use of which would compensate it for doing the business, and a further deposit sufficient to cover the cost of redemption. Violent opposition to the plan arose at first on the part of the country banks, which anticipated a curtailment of their circulation and profits. Aided by six other banks, however, the Suffolk was able to force them into the system by collecting and returning large amounts of their notes and demanding redemption in specie over their counters. The Suffolk became a clearing house for the notes of New England banks, balancing them against each other day by day. As a result, redemptions were frequent, the average life of the bank note being about five weeks. New England currency was kept at par with specie, and the volume of circulation was automatically adjusted to business needs. The Suffolk system was strengthened by a law passed by the legislature of Massachusetts in 1845, providing that no bank should pay out any notes except its own. The Suffolk Bank system, together with a rival, the Bank of Mutual Redemption, continued to dominate the banking of New England until the adoption of the national banking system, which required every bank to receive the notes of every other bank at par.

Among the reasons for the successful working of the Suffolk system, Dr. Dewey notes the rigid system of examination and supervision of banks which was general in New England, and the fact that by permitting correspondent banks to overdraw the Suffolk kept them constantly in its power. He doubts

whether the system could have been successfully extended over the whole United States, limited as it was at that time. On the other hand, Horace White says:

Its success assures us that a credit currency is entirely feasible, even in a country where independent banks of small capital abound. The prime condition of such a system is frequent redemption of notes at commercial centers, and the restriction of the circulation, as much as possible, to the neighborhood of the issuing bank.<sup>1</sup>

The fact that before the adoption of the national banking system, there were four distinct systems of note issue side by side is sufficient to account for the chaotic condition of the currency and the demand for uniformity. In the experiments and banking systems thus far reviewed, note issues were based upon general assets. In the other systems, issues were protected by a safety fund, or were based upon public securities, or upon the faith and credit of the state.

The safety fund system established in New York state in 1829 was a system of mutual insurance. Each bank was required to contribute annually to a special fund one-half of one per cent of its capital until the payments should amount to three per cent. This fund was to be used to pay all the debts of failed banks except capital stock. Dr. Chaddock, in his study of the safety fund banking system, notes that the makers of the law did not realize the significance of the guaranty until the numerous bank failures of 1840-1842 caused the system to break down under the burden, and quotes the report of the bank commissioners of 1841 to show that the law of 1829 was primarily designed to secure note holders only.<sup>2</sup> Realizing the mistake, the law was amended in 1843 so as to make the fund applicable only to the payment of the notes of failed banks. This amendment in the law came too late. In 1838, the bond-deposit system was established and new banks after that date incorporated under the new plan. Furthermore, a law of 1846 prohibited the granting or extension of any special bank charters, and as all the safety-fund banks operated under such

<sup>1</sup> *Money and Banking*, p. 435.

<sup>2</sup> p. 272.

charters, the maintenance of the safety fund fell upon a constantly decreasing number of banks. Dr. Chaddock notes the significant fact that the legislature in changing the law in 1842 did not discuss the question of guaranty of deposits. He says: "The deposit business had not developed to the point where losses to depositors from failure of banks outweighed or even approached the losses to the public through bank notes of insolvent institutions."

A report made to the New York senate in 1849 refers to note holders as "involuntary creditors" of a bank, while depositors are voluntary creditors and therefore not in need of the same security against loss as the note holders. After about 1850, however, deposits increased much more rapidly than either capital or circulation and the panic of 1857 made clear the necessity of protecting depositors. The result was the adoption of a specie reserve against deposits, a feature carried over into the national banking system.

The fundamental defect of the system was the failure to limit the use of the fund at the start to the payment of notes, and to base the contributions on circulation instead of capital. It is estimated that a tax of one-fourth of one per cent on circulation would have covered all failures and made the notes of all banks in the system secure.

Though the evolution of the safety-fund idea was checked in New York, first by the introduction of a new system resulting from political conditions, and later by the establishment of the national banking system, it has stood successfully the test of long experience in Canada. Under the Canadian system, bank notes are a first lien on the assets, and are further protected by the double liability of stockholders. The final resort, in case of failure, is the "circulation redemption fund," a sum of gold or Dominion notes equal to 5 per cent of the average circulation which each bank is required to keep on deposit with the minister of finance. Professor J. F. Johnson notes, however, in his admirable study of *The Canadian Banking System*,<sup>1</sup> that the

<sup>1</sup> Joseph French Johnson, *The Canadian Banking System*. Washington, Government Printing Office, 1910. Publications of the National Monetary Commission. (Senate doc. no. 583, 61st Cong., 2d sess.)

success of the system depends primarily upon the plan of redemption. Every bank is required to redeem its notes at its head office and in seven other leading commercial centers. The bank note, says Professor Johnson,

is almost the sole circulating medium of Canada, and the people have confidence in it because it is tested every day at the clearing houses and proves itself as good as gold. This daily test would probably not take place with the same regularity as now if the banks did not have branches or if they were obliged to deposit security against their issue.<sup>1</sup>

Note issues are based on general assets, and respond automatically to the fluctuations of the business demand.

In all recent proposals for thorough-going currency reform, the idea of a fund to guarantee the notes of failed banks appears. The Indianapolis plan of 1898 proposed that bank notes be divorced from bonds, and be protected by a guaranty fund in gold coin equal to five per cent of the total issue, and maintained by a graduated tax on circulation. The New York Chamber of Commerce scheme, the Baltimore plan, and the Fowler plan, all provided for a guaranty fund, but the Fowler bill of 1908 contemplated the guarantee of deposits as well as notes. The clear lesson taught by the experience of New York and Canada has apparently been disregarded in some of the western states where recent legislation has provided for the guarantee of deposits.

Prior to 1838, bank charters in New York were granted by special act of the legislature, and in many cases were given as patronage to political favorites. As a result of the scandal growing out of this practice, a strong sentiment developed in favor of a "free banking" law which was enacted in that year. This law provided that any person or association might issue circulating notes to be used as money by depositing with the comptroller of the state bonds of the United States, of the state of New York or other approved states, or mortgage bonds on real estate worth double the amount of the mortgage. In case of a bank failure, these securities were to be sold to redeem its

<sup>1</sup> p. 23.

notes. No provision was made for redemption in specie, and the state did not guarantee the notes.

Individuals as well as associations promptly took advantage of the plan. Within a year, 133 new banks were organized, many of them for the sole purpose of issuing notes. They simply converted securities deposited with the state officials into circulating notes, and in many cases made no pretense of doing a discount and deposit business. After some failures in which the securities were not sufficient to meet the notes, the law was amended so as to exclude all securities except the bonds of the United States and New York. Other faults were remedied as experience showed the weakness of the system. Under the amendment of 1840, country banks were compelled to redeem their notes in New York and Albany at a discount not exceeding one per cent (afterwards made one-fourth of one per cent). Later, no one was allowed to transact a banking business except at his place of business, and all banks were compelled to be banks of discount and deposit if they wished to continue the note-issuing function.

These changes gradually strengthened the system, until in the matter of security there was little to be desired. But it was inelastic and unresponsive to the needs of the business community. Banks could issue notes only in proportion to the bonds deposited, which bore no relation whatever to current business demands. Despite the defects of the plan, it became the model of the national bank system in 1863.

The free banking system appealed to popular sentiment and was tried in some form in sixteen states. The system of issuing notes against securities was adopted in several western states in the 50's, generally without the restrictions which the experience of New York had shown to be necessary to protect the note holder. This inherent defect, increased by bad management and lack of proper regulation, led to failure and disaster.

The State Bank of Ohio, established in 1845, combined the safety-fund and bond-deposit principles, and stands out in a period of reckless banking as an institution "always solvent and successful." It had thirty-six branches, each liable for the note issues of all the others. Note issues were restricted in amount



to twice the capital, and were safeguarded by a fund, consisting of money or bonds of the state or of the United States, deposited with a central board of control.

In 1842, Louisiana, after a disastrous experiment with a state-owned bank, established a sound banking law under which the liabilities of all banks were covered one-third in specie, the other two-thirds by commercial paper limited to ninety days. There was no other limit to the amount of circulation, but prompt redemption was secured by the requirement that a bank should pay out no notes but its own, and the balances between banks should be settled weekly in specie. The banks of Louisiana went through the panic of 1857 without suspension, and continued in prosperous operation until the civil war.

The experiences of banks owned and managed by the states in whole or in part were in the main disastrous. Mississippi, Arkansas, Florida, Georgia, the Carolinas and others tried state ownership and management with but poor results. Politics, dishonesty and unsound methods brought most of them to ruin.

The State Bank of Indiana, incorporated in 1834, stands out as the most striking exception to the rule of failure among state-owned banks. It was modeled largely upon the Bank of the United States, having a monopoly of banking in the state, and a system of ten branches. The state subscribed one-half of the \$1,600,000 capital, all of which was paid in specie. Each branch was apportioned one-tenth of the capital, and was allowed to issue notes on its liquid assets up to twice its capital. Each branch, also, was required to accept at par the notes of the other branches, and to redeem its own notes in specie. The general management was in the hands of a president and a board of directors, four chosen by the legislature, and one by the private stockholders of each of the several branches, but each branch practically managed its own affairs. Thanks to good management, sound methods, and thorough examinations, the bank was very successful, and maintained specie payments through the crisis of 1857.

Keeping in mind the fact that state banking during the period under review was concerned primarily with the regulation of note issues, the deduction seems indisputable that systems based



upon the deposit of public securities or upon the faith and credit of the states, failed, while those based upon the banking principle succeeded. It remains true, of course, that irrespective of systems, laws, or regulations, success or failure in individual cases depended upon conservative management and a real need for the bank. Nevertheless, the experiences of the period, particularly of the New England banks and the Bank of Indiana, vindicate the principle of banking on general assets, and impeach the basic principle of the present national bank system.

On the other hand, though some of the systems secured for certain sections of the country a fairly uniform and secure currency, yet considered in the aggregate for the entire country, these systems lacked the quality of uniformity. Both banks of the United States secured for the whole country a uniform currency. The Suffolk bank accomplished a like benefit for New England; yet even there the depreciated currency which drifted in from other sections was always a source of annoyance. The national banking system gave to the entire country a currency at once safe and uniform, a blessing which it had not enjoyed since the days of the First and Second Banks of the United States. Unfortunately, however, this blessing was secured at the expense of the equally important quality of elasticity. These experiences seem to indicate that the happy combination of safety, uniformity and elasticity of bank notes can best be attained by resting them upon the general assets of the bank, secured by a first lien upon assets and the liability of stockholders, and with a guarantee fund for the redemption of the notes of failed institutions, and responsibility of each bank for the redemption of its own notes.

Since the establishment of the national banking system, which secured a uniform national currency, the question of note issues has decreased in importance owing to the fact that banking has tended to the lending of credit in the form of deposit accounts rather than in the form of notes. The regulation of reserves has, therefore, supplanted the regulation of note issues as the crux of banking reform. Here the experiences of early state banking offer little help. As already noted, the panic of 1857 directed attention to the rapid development of deposit currency,

and New York was among the first to enact legislation requiring banks to carry a fixed reserve against deposits. This principle was incorporated in the national banking system, and has been adopted in some form in the banking regulations of most of the states, with the result that our banking reserves are immobile and unresponsive to business needs. This immobility of bank reserves is generally conceded to be one of the weakest points in our present system. The trouble lies, not in the proportion of the reserves, but rather in their rigidity, which in practice prevents them from fulfilling the true function of reserve in time of need. As Dr. A. Piatt Andrew, Assistant Secretary of the Treasury, has recently said :

No matter what the exigency, no matter how insistently a precarious situation in the financial world demands a liberal extension of accommodation on the part of the banks, our institutions, unlike those of any other banking system in the world, are prevented from responding to these demands by this uncompromising restriction of deposits to an untrespassable maximum proportioned to the cash reserves.<sup>1</sup>

Still another defect incident to our miscellaneous system of banking is the lack of solidarity or centralization. This desideratum was secured in some degree in earlier days through the influence of a single powerful bank like the First and Second Bank of the United States or as in New England through the Suffolk system. Under the present system, some measure of cohesion is secured by the influence of the comptroller of the currency, by voluntary associations, like the clearing houses, and, more recently, by emergency currency associations; but at best, these expedients are local, often antagonistic, and never broad enough to cover all conditions and sections. Whether the required unity and cohesion can be secured best through the medium of a central bank or through some other plan of banking, centralization is the main problem before the National Monetary Commission.

<sup>1</sup> *Annals of the American Academy*, November, 1910, p. 8.

## THE BUSINESS MAN'S VIEW OF CURRENCY REFORM<sup>1</sup>

IRVING T. BUSH

Chairman of the Currency Committee of The Merchants' Association of New York

**A**S Chairman of the Currency Committee of The Merchants' Association of New York, I am invited to discuss the question of currency reform from the point of view of a business man. I shall waste no time in pointing out the defects of bond-secured bank notes or the need for an elastic currency. On these points all competent students are in agreement. They are agreed as to the evils of the present system and the principles upon which reform should be based. There are but two things which it is necessary to consider: the method of applying the reform principles upon which all agree, and that of creating among the general public a knowledge both of the principles and of their proposed application.

The methods of currency reform that are worthy of serious discussion divide themselves into two classes: Those providing a central control, and those permitting the banks of the country to issue bank notes under certain rules up to an established limit, without central control. While the committee for whom I speak recognize the force of the arguments which have been advanced against central control, our conclusion is that it is the best method to adopt. In speaking recently upon this subject, I stated that we had eliminated as unimportant all objections to central control except four. These are as follows:

First, a fear on the part of many that the control of our currency will pass into the hands of politicians.

Second, the danger of control by special interests.

Third, the fear of exclusive control by the banks of the country.

<sup>1</sup> A paper presented at the meeting of the Academy of Political Science, November 11, 1910.

Fourth, the feeling on the part of some bankers that any currency control which takes the form of a central bank will prove to be a competitor in their business.

These four objections I believe exist, and must be recognized. I am sure, however, that the final analysis will show that only one of them is really to be feared; that is, control by special interests. If the general public can be satisfied that any system of control adopted can be administered for the good of the country and that all selfish interest can be absolutely eliminated, the objections to a central bank will end.

The proposition for which we stand is to design a method of selecting a board of governors of a central bank of certain limited functions, so that selfish interest can never dominate its administration. The opponent of this proposition usually dismisses the whole matter with the sweeping statement that this cannot be accomplished. We do not believe this to be true. Other nations have succeeded in controlling their currency through the medium of a central bank without finding this danger insurmountable, and we believe that if the object to be attained is recognized at the outset, and every safeguard provided, the people of this country are quite as capable of creating a currency control free from the influence of selfish interests as are our commercial competitors abroad.

Modern government and world progress rest upon the exercise of human judgment. If we admit that it is impossible to select administrative agents to whom under established restrictions we may delegate certain powers, government by the people must fail. We have seen many instances of the misuse of powers so delegated, but this has been the case only where the powers granted have been dangerously general in character, or where the people have been so busy with their everyday vocations that they neglected proper supervision of the officials selected.

Public sentiment when aroused is nearly always correct. In its resentment it frequently goes to extremes, but at the base of all great movements of the general mind of the country is to be found a desire for justice. In deciding whether we shall establish well-defined restrictions for the control of our currency and

then delegate its administration to a central board, or whether we shall attempt to create for all time a method which can be successfully operated without such control, we must recognize the dangers of both plans.

We have seen many cases where the power of control was selfishly used, but we have also had frequent experience of the danger of banking methods that lack such control. If in recent years there had been a central board supervising our banking and currency, equal in dignity and importance to the Supreme Court of the United States, a number of gentlemen who are now living at public expense might be successfully conducting their banks. This danger is quite as real as the danger of misuse of the powers which we delegate. It is true that the comptroller of the currency has the theoretical power to prevent unsound banking, but it is most difficult for him to detect improper methods in time.

If, however, the method of note issue were through a rediscounting of commercial paper by a central bank, a direct check upon unsound operations would be created, which could not fail of successful operation. The moment a bank improperly operated was refused the privilege of rediscount its position and usefulness in its community would be ended. In determining, therefore, the relative dangers of a controlled or an uncontrolled currency system, the importance of these considerations must be weighed.

The natural optimism of the people of the United States, perhaps our greatest asset, is another reason why we should delegate to some of our best minds power to check expansion, when it has gone far enough. If we create an automatic system which will permit each bank to issue currency up to say one hundred per cent of its capital stock, there are many who will consider this as a recognized part of their assets, and will expand their operations as recklessly to this limit as to those which are at present provided, and we shall find that no safety check has been created.

We are against an uncontrolled system also for the reason that such methods are as yet untried by any great nation. The only example of any importance of such a system is that of

Canada to-day. Canada has a population of about seven million. Its problems of international finance are nothing as compared with those of this country, and in times of financial stress it has both England and the United States to fall back upon.

We object to an uncontrolled system again, because it provides no medium for the protection of our gold reserve through dealings in gold and foreign exchange. The power to safeguard this point is absolutely essential, and it requires, in an emergency, the exercise of our best banking and business judgment.

We are against an uncontrolled system because we recognize that if rules to govern our financial operations had been adopted fifty years ago, based upon conditions as they then existed, they would be outgrown and hopelessly inadequate to-day, and we do not believe that it is possible for the present generation to provide regulations which will meet the unknown developments of the future.

Most systems of currency issue which do not provide for central control are based upon what is known as asset currency. These schemes vary in detail, but the general plan is to issue currency against the assets of the bank. As business men we are against asset currency because we believe it is a first cousin to bond-secured currency which makes it mandatory that bank notes be issued against an investment in fixed securities. Asset currency makes it permissive that this be done. We believe that the funds of the depositor, which are a demand obligation, should not be invested in fixed securities, but should be held as nearly liquid as possible, to meet the requirements of trade. The banking experience of the world has shown that this object is best attained by the investment of these funds in short-term commercial paper, which can be readily liquidated within a limited number of days. Asset currency in its usual form makes it possible for a bank to invest its assets in bonds or underwritings, and to issue bank notes against them.

We also believe that it is impossible to create an uncontrolled system which will permit the centralization and proper administration of our reserves. This is a most important point. If our reserve is scattered among 20,000 banks, it may be as great



in the aggregate, but it cannot be so effective in preserving public confidence, as if centralized in one great reservoir where we all may see and measure its immensity. It is, of course, quite possible to design an uncontrolled system, which will state that the reserves must be held in one central reservoir, but the moment you attempt to administer this reserve properly the power of control must be delegated to someone. I have listened to addresses in which an apparently automatic system was carefully worked out, until the point of administering the reserves was reached. Then the author, who has usually devoted the first half of his speech to denouncing methods of central control, has calmly turned over to certain government officials, or others, the administration of this enormous mass of money, upon which our whole currency and banking system finally rests. This brings me to the point that nearly every recent plan for the reform of our currency either openly provides some board of central control, as in the general clearing-house plan or else covertly recognizes its necessity by delegating to someone the power to administer reserves. If this is so, are we not really quarreling over the selection of a name?

There are to be found in various parts of the country many who believe that we cannot delegate power to a central bank, but are quite certain that the general clearing-house proposition is sound. Where is the real difference? The country is so large that any system must be operated through the medium of branches. Each calls for a board of central control which is as much subject to the danger of selfish interest in one case as the other, and the function of note issue is practically identical. In time of need, the banker takes a portion of his acceptable assets to the nearest operating branch, and receives in exchange an agreed percentage of their value in bank notes and certificates. There may be some trifling difference in detail, but the principle is identical.

The general clearing-house plan does not provide the necessary power and machinery to deal in gold and foreign exchange. Otherwise it is a central bank, except in name. The name we consider important only in its international relation. We have a reputation abroad for trying various kinds of freak

currency. Other things being equal, we believe that it is desirable to adopt the same general methods that are used and understood by other great nations. By doing this we are the gainers.

The central bank which we propose has nothing in common with the two central banks which formerly existed in this country, and is a very limited and restricted form of the central bank employed by other nations. We have now 20,000 banks which are in intimate daily touch with every merchant in each small community. We should do nothing to interfere with the operation of these banks, and we do not propose creating an institution which will in any way compete with them. We suggest delegating two powers only: first, the right to issue notes under certain well-defined conditions, in exchange for approved short-term commercial paper; and second, the power to deal in gold and foreign exchange. We do not even insist that a central bank be made the financial agent of the government. In our opinion this will be desirable, but it is not an essential part of our currency system, and it is our aim to reform that system first, without introducing unnecessary details and complications.

I now come to my second point, which is, how to create a more general knowledge of this most important subject. As I look back upon the speeches which I have made, and remember the addresses to which I have listened, it seems to me that all of us, when discussing this subject before a lay audience, make a profound impression upon ourselves, but leave those who have been patient enough to listen, with the idea that the subject is intensely complex and far beyond their understanding. This is unfortunate, because in reality the underlying principles are simple and readily understood.

The present situation is complicated, of course, by the fact that we have seven hundred millions in bank notes secured by government bonds, which the government has forced the bankers to purchase at a rate of interest not warranted by investment conditions. Before a banker purchases bonds as a basis for circulation, he estimates the value of the money which he is investing. The notes which he is enabled to issue must find employment, and unless the operation is profitable it is not under-

taken. This means that the general public in the end pay a proper rate of interest upon the bonds of the government, through an increase in the cost of their currency. If this simple fact is made clear, popular sentiment will be in favor of refunding our government bonds at a rate of interest which will cause them to be sought as an investment.

A number of ingenious methods have been suggested by which we take money out of one pocket and put it into another, to pay off these bonds. By far the best method is to meet the issue fairly and squarely, to borrow in the investment markets of the world what money the government may need, paying a fair rate of interest and not complicating our currency situation.

Once we have overcome this difficulty, we are able to make a fresh start, and it is of the first importance that students of this question, such as are gathered here to-day, and those who speak upon the subject, endeavor to impress upon the general public the simplicity of the problem, and to make them realize how readily it can be understood by the lay mind. Point out to them, for instance, that the functions of any note-issuing institution are merely those of a bank for banks. The man who is operating even the simplest industry will understand this, if you compare the bank's situation with his own. When conditions arise which make it impossible for him to collect as readily as usual the accounts due, or when through some change in trade conditions he finds himself with a larger amount of merchandise in stock than he can comfortably carry, he goes to his banker and explains his condition. If it is sound he pledges certain of his assets or his commercial paper properly endorsed, and obtains assistance until normal conditions reassert themselves.

When the banking community as a whole has extended all the relief within its power and then finds that collections are slow, or that merchants are overstocked with the merchandise in which they deal, there is no bank to which the bank can appeal for temporary assistance. If a central institution, created for the general good of the entire country, were in existence, the banks in turn would pledge the commercial paper which they hold, and obtain currency to meet the needs of the busi-

ness communities which they serve. There is absolutely no difference in principle, and if the problem be brought down to this level, it will be understood by anyone.

One of the conditions most essential to the successful operation either of the commercial bank which is to help the merchant directly, or of the central bank which helps the merchant indirectly by helping the commercial bank, is that power be intelligently exercised by somebody to say when expansion shall be checked. Many business men know that they have been tided over critical times by their banker, with the understanding that the assistance is temporary and that they must curtail their operations to an amount in proper proportion to their capital. The merchant is saved and is granted time to reconstruct his business upon safe lines. Without this advice and assistance he would have been forced to the wall.

In the same way a bank which has been attempting to carry an amount of business out of proportion to its available capital, may tide over an emergency, but conditions may be insisted on which will avoid the recurrence of the situation. If you will consider the problem from this standpoint, many illustrations will occur to you, and I believe that the greatest good can be done if we start out to correct the impression that the problem is complicated and beyond the understanding of the average individual, and if we undertake to bring this discussion down to the level of understanding of those who conduct the most simple industries of the country.

## AMERICAN BANKS IN TIMES OF CRISIS UNDER THE NATIONAL BANKING SYSTEM<sup>1</sup>

BY E. W. KEMMERER

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YOUR committee invited me a few weeks ago to prepare a paper reviewing Professor O. M. W. Sprague's *History of Crises under the National Banking System*,<sup>2</sup> and offering specifically my own constructive suggestions as to how the banking system should be modified to enable it to function properly in times of crisis. This is obviously a rather large undertaking, and I can only hope to consider briefly a few of the more important points.

Professor Sprague's monograph is a careful and critical study of the workings of the national banking system during periods of financial storm and stress. It studies in detail the crises of 1873, 1893, and 1907, and gives a brief consideration to the panic of May, 1884 and the financial stringency of 1890. The conclusions of the book are largely based upon the banking figures of the comptrollers' reports and of the weekly bank statement, and upon the published money market rates appearing in the financial press. Professor Sprague has used the best historical and economic material available on his subject; in saying this, however, it should be borne in mind that much of the most valuable material for the interpretation of events so recent is not yet available, and in the nature of the case cannot be during the lifetime of the principal participators. A bank is frequently described as a manufacturer of credit. The corner stone of credit is confidence—confidence of men in men. A panic is a collapse of credit. It is an intensely human affair,

<sup>1</sup> A paper presented at the meeting of the Academy of Political Science, November 11, 1910.

<sup>2</sup> Sprague, *History of Crises under the National Banking System*. Washington, Government Printing Office, 1910. Publications of the National Monetary Commission. (Senate doc. no. 538, 61st Cong., 2d sess.)

and many of the determining influences are of a personal and confidential character, and very inadequately reflected in the cold figures of the bank statement.

Let us first consider the chief points in Professor Sprague's treatment of the three crises, *i. e.*, those of 1873, 1893 and 1907, to which he devotes the major part of his book. Time will not permit an outline of the history of these crises, and I am doubtless safe in assuming on the part of an audience of this kind familiarity with their principal features.

#### CRISIS OF 1873

The crisis of 1873 marked the culmination of a long period of speculative mania and of low business and political morality, such as is liable to be the aftermath of a protracted and destructive war. For over a year there had been frequent forebodings of a financial panic. On the 18th of September, 1873, when the crop-moving demand for money was at its height, the banking house of Jay Cooke & Co. closed its doors, and with this act the beginning of the crisis of 1873 may best be marked. This crisis lasted about forty days and the events were of the character with which we are all too familiar.

Were the national banks of the country reasonably well prepared to meet the strain of this crisis? In answer to this question Professor Sprague shows<sup>1</sup> that during the four years immediately preceding there had been an expansion of loans amounting to 35 per cent, an increase of deposits amounting to 28 per cent, an increase in circulation of 16 per cent, and an increase in reserves of 5 per cent. This increase in reserves, moreover, being due entirely to greater holdings of gold, was largely ineffective because gold was not in general circulation at the time, and it stood at such a premium in terms of greenbacks that it was more of the nature of an investment than of a money reserve. In the case of each group of banks, *i. e.*, the country banks, reserve city banks and New York banks—New York was the only central reserve city at the time—there was a slight decline in the percentage of reserves to demand liabilities.

<sup>1</sup> pp. 9-13.



Deducting specie holdings from deposits, and taking the ratio of legal-tender notes to remaining deposit liabilities, Professor Sprague finds a serious change for the worse on the part of New York national banks, the percentage of reserve having declined from 31.6 for June 1871 to 25.2 for June 1873. The most menacing part of the situation, however, he finds<sup>1</sup> in the facts that the banks of the country had very largely increased their deposits of reserve money with New York city banks, and that seven of the New York banks by persisting in the practice of paying interest on bankers' deposits, against the will of the great majority of the associated banks, had secured (Oct. 3, 1872) 76 per cent of the net bankers' deposits (*i. e.* \$45,000,000 out of \$58,900,000)<sup>2</sup>. These 7 of the 50 clearing-house banks had only 20 per cent of the total capital and surplus, and 18 per cent of the total deposits; their bankers' deposits, however, were \$11,000,000 greater than their individual deposits, and their reserves were six-tenths of one per cent below the legal requirement; while the reserves of the other 43 banks, with individual deposits amounting to over eleven times their bankers' deposits, were eight-tenths of one per cent above. These seven banks were all known as Wall Street institutions and their loans were largely in connection with stock exchange dealings.<sup>3</sup> When the shock of the panic came these banks, which held as deposits a large percentage of the banking reserves of the country, and which, therefore, "were chiefly responsible for the maintenance" of the country's credit machinery,<sup>4</sup> quickly found themselves unable to meet the demands of outside bankers, and where forced "to resort for aid to their more conservative neighbors". On September 20th excitement on the stock exchange became intense and prices declined so rapidly that the governing committee closed the exchange, and it remained closed ten days. "Two trust companies, after withstanding runs for a short time, were obliged to close their doors," and one national bank failed. "The banks were receiving urgent demands for funds by telegraph from their banking correspondents in all parts of the country".<sup>5</sup>

<sup>1</sup> Sprague, pp. 13-17.

<sup>2</sup> *Ib.*, p. 17.

<sup>3</sup> *Ib.*, p. 24.

<sup>4</sup> *Ib.*, p. 35.

<sup>5</sup> *Ib.*, pp. 43, 44.

The New York clearing-house association met the situation by vigorous measures. On September 20th it authorized the issue of clearing-house loan certificates and provided further "that . . . the legal tender belonging to the associated banks shall be considered and treated as a common fund, held for mutual aid and protection, and the committee appointed shall have power to equalize the same by assessment or otherwise, at their discretion."<sup>1</sup> Immediately after this action the situation began to clear up,<sup>2</sup> and it appeared that the worst stage of the panic had been passed. "Had all the New York banks been purely local institutions," says Professor Sprague, "with no responsibilities to the rest of the country, there can be little doubt that they would have been able to weather the storm without further difficulty. But the most considerable withdrawals of currency which they had to meet came from out-of-town banks, and demands from that quarter showed no signs of diminishing, but rather increased day by day."<sup>3</sup> For several days the New York banks appear to have met their obligations to interior banks in the way of shipping currency,<sup>4</sup> and "all reports agree that the banks resumed lending operations upon the issue of clearing-house loan certificates."<sup>5</sup> The initial reserves, however, were too small for the volatile character of bankers' deposits in time of panic, call loans could not be appreciably reduced,<sup>6</sup> and the banks soon found themselves "at the end of their resources." On September 24th a resolution was adopted providing for suspension—a resolution which Professor Sprague<sup>7</sup> believes was amply justified under the circumstances. A currency premium running sometimes as high as 4 per cent existed for nearly a month.<sup>8</sup> Foreign exchange was disturbed, but the disturbance was of short duration, the domestic exchanges were temporarily deranged in many parts of the country, and were for a time completely blocked in Chicago. Numerous pay-roll difficulties were reported in many parts of the country.<sup>9</sup>

<sup>1</sup> *Chronicle*, Sept. 27, 1873, p. 411.

<sup>2</sup> *Ib.*, p. 51.

<sup>4</sup> *Ib.*, pp. 52 and 53.

<sup>7</sup> *Ib.*, p. 54.

<sup>8</sup> *Ib.*, p. 57.

<sup>3</sup> Sprague, p. 50.

<sup>6</sup> *Ib.*, p. 53.

<sup>6</sup> *Ib.*, p. 45.

<sup>9</sup> *Ib.*, pp. 71-74, 75.

Despite the lack of preparation with which the New York banks approached the crisis, and particularly the seven banks holding the lion's share of bankers' deposits, Professor Sprague believes that, "in comparison with the banks in the reserve cities, the New York banks responded remarkably well to the demands made upon them."<sup>1</sup>

The author's conclusions with reference to the functioning of national banks in the crisis of 1873 seem to be substantiated by the evidence, and while the writer is inclined to disagree with him on a few minor points, he can see no reason to doubt the essential soundness of his principal contentions.

#### CRISIS OF 1893

The next important crisis was that of 1893, which is generally considered to have been due primarily to the loss of confidence and fear of a depreciated currency caused by the inflation measures of the period, such as the excess of federal expenditures over receipts, the increase in the bank note circulation, and especially the monthly issues of treasury notes for the purchase of silver under the Sherman act. The long period of depression following the crisis is commonly attributed largely to the agitation for free coinage of silver. Professor Sprague believes that the influence of currency inflation in starting the panic has been greatly exaggerated, and finds other causes<sup>2</sup> largely responsible for the outbreak, and especially for the depression which followed; causes such as "unremunerative prices for agricultural staples, and the heavy load of farm-mortgage indebtedness; also railway receiverships, which were due to the oversanguine estimates of the future and reckless financing of the wildest sort." While I believe that the currency inflation of the period (actual and prospective) directly and indirectly had a greater influence in causing the crisis of 1893 than Professor Sprague's discussion implies, and find his arguments upon this point inconclusive, this is not the place to attempt to weigh the relative importance of various causes of the crisis. Suffice it to say that a crisis which had been threat-

<sup>1</sup> Sprague, p. 89.

<sup>2</sup> *Ib.*, p. 154.

ening since 1890, and which had been stayed by the fortunate crop situation in 1891, broke out in the summer of 1893, continued until the fore part of September, and was then followed by a long period of depression ending the latter part of 1896.

During the eight months ending with May, 1893, there had been a slight loan contraction on the part of the banks of New England and the middle states, and a substantial expansion on the part of those in north central and western states; in the southern states loans were stationary.<sup>1</sup> For all national banks the proportion of cash reserves to deposit liabilities was 16.6 per cent in May, 1891, 18.4 per cent in May, 1892, and 16.9 per cent in May, 1893.<sup>2</sup> For the last date Professor Sprague concludes that the "statistical position of the banks was . . . reasonably satisfactory," but that the banks were carrying a large amount of doubtful loans made in part before the panic of 1890 and in part recently, "serving to bolster up weak enterprises and to make an already unhealthy situation more unsound."<sup>3</sup> The New York City banks upon which fell the enormous responsibility of handling a large part of the country's bank reserves "were not so strong in cash reserves . . . as the responsibilities of their position demanded," but were "far more amply provided with cash than has been customary in periods of active business either before or since."<sup>4</sup> For some months prior to the outbreak of the panic the New York banks had carried out slowly and with comparatively little difficulty a policy of loan contraction.<sup>5</sup>

The failure of the National Cordage Company on May 4th may be considered the event which marks the beginning of the panic. The situation, however, was not at its worst until nearly a month later. Call rates reached 74 per cent in the stock panic of the last week in June, and prime paper was quoted at from 8 to 15 per cent with business almost nominal. The number of commercial failures rose from 214 for the week ending June 1st to 527 for the week ending July 20th.<sup>6</sup> Meanwhile the outflow of gold continued, though at a slackening pace.

<sup>1</sup> *Ib.*, p. 160.

<sup>2</sup> *Ib.*, pp. 160 and 161.

<sup>3</sup> *Ib.*, p. 161.

<sup>4</sup> *Ib.*, p. 153.

<sup>5</sup> *Ib.*, pp. 163 and 164.

<sup>6</sup> *Bradstreet's*, vol. xxi, pp. 369 and 483.

Professor Sprague says, "Nineteen national banks were placed in the hands of receivers during May and June, and the number of state and private banks which fell was even greater".<sup>1</sup> Throughout entire sections of the country there was widespread distrust of the solvency of banks.<sup>2</sup> The surplus reserve of New York City banks had fallen during the three weeks ending June 17 from \$24,600,000 to \$8,700,000, largely as the result of demands of bankers for shipments to the west, and while no banks in the city were yet in difficulty, the machinery for the issue of clearing-house loan certificates was set up on June 15th, as "a precautionary measure which will tend to prevent contraction of loans if this drain goes on".<sup>3</sup> Professor Sprague says<sup>4</sup> that suspension was not at this time associated in the mind of any one with the issue of clearing-house loan certificates and that the common impression that suspension was immediately resorted to by the banks is an unfounded one. This, he claims,<sup>5</sup> is a point "of the very utmost importance, because in 1907 . . . the tradition seems to have become established among New York banks that the issue of clearing-house loan certificates and the suspension of cash payments are virtually one and the same thing". If such a tradition has become established it is undoubtedly a false one. Professor Sprague's argument, however, is not conclusive when he says,<sup>6</sup> "the issue of clearing-house loan certificates does not seem to have changed in the slightest degree the relations between banks and their depositors," because "nowhere in contemporary journals has there been found a single reference to refusal or delay on the part of banks in meeting the demands of depositors for cash." The argument is inconclusive for the simple reason that the relations between a banker and his customers are such that there might be both refusals and delays without the matter getting into the public press.<sup>7</sup>

After the issuance of clearing-house loan certificates the bank

<sup>1</sup> Sprague, p. 168.

<sup>2</sup> *Ib.*, p. 170.

<sup>3</sup> *Chronicle*, June 17, 1893, p. 100.

<sup>4</sup> Sprague, p. 171.

<sup>5</sup> *Idem.*

<sup>6</sup> *Ib.*, p. 171.

<sup>7</sup> Cf. A. D. Noyes, *The Banks and the Panic of 1893*. *Pol. Sci. Quart.*, March, 1894, p. 26.



reserves continued to fall away, the surplus reserve of \$8,700,000 of June 17th became a deficit of about \$5,000,000 July 8th, a deficit which was reduced somewhat the following week.<sup>1</sup> About the middle of July, according to Professor Sprague, "the situation . . . was such as to give rise to hopes that the worst of the crisis was over." Reported currency movements were in favor of New York, and the prospects appeared good for the repeal of the silver-purchase law. The returns of national banks to the comptroller on July 12th showed that with the exception of New York banks, which had increased loans \$1,300,000 and had decreased reserves from 28.5 to 25.3 per cent, all classes of banks, *i. e.*, country banks, reserve city banks, and central reserve city banks, had resorted to contraction, and had a higher percentage of reserves than at the beginning of the two months' financial strain. In other words, to quote Professor Sprague,<sup>2</sup> "the banks in all parts of the country were relying upon the New York banks to supply them with the bulk of the money withdrawn by depositors, and by loan contraction were positively strengthening themselves". Up to this time in the crisis "the New York banks had fully lived up to the most exacting requirements which the responsibilities of their position as central reserve agents placed upon them . . . ."

During the third week in July another wave of distrust of the banks swept over the West and South. Between July 14th and August 1st, thirty-three national banks suspended, there were numerous other failures, and heavy withdrawals of funds from the New York banks were again resumed. The Erie railroad went into the hands of receivers, there was a severe panic on the stock exchange, and "suddenly and unexpectedly," to quote Professor Sprague,<sup>3</sup> "the banks throughout the country, beginning with those in New York, partially suspended cash payments". A currency premium—more correctly a check discount—appeared August 3d and continued a month, amounting on several occasions to as much as 4 per cent.

At the time that suspension occurred Professor Sprague<sup>4</sup>

<sup>1</sup> Sprague, p. 172.

<sup>2</sup> *Ib.*, pp. 174, 175.

<sup>3</sup> *Ib.*, pp. 177 and 178.

<sup>4</sup> *Ib.*, pp. 178 and 179.



finds that the situation was in many respects improving, foreign purchases of our securities were made in large quantities during the week ending July 29th, gold at the same time began to move toward this country, and "there was no reason to believe that the continued demand for shipments of currency to the interior would not be discontinued in the course of time in August." This last statement appears very doubtful when one remembers that the crop-moving demand for cash normally begins in earnest the latter part of August and continues strong throughout September and October. Furthermore, it seems probable that, although the speedy repeal of the silver purchase law was anticipated in England, the chief cause for the heavy purchases of our securities by Englishmen at this time was the slaughter prices resulting from the stock-exchange panic.

Assuming that conditions were improving, Professor Sprague asks why suspension with all its attendant evils should have taken place. His answer<sup>1</sup> is that the real reason was the same as that pointed out by the clearing-house committee in 1873, *i. e.*, the fact that the drain had fallen, not equally upon the banks, but far more seriously upon the few large ones which insisted on paying interest on bankers' deposits, and which held the bulk of those deposits, against which cash was being so heavily demanded. Professor Sprague believes<sup>2</sup> that considering the many hopeful factors in the situation, the arrangement for equalizing reserves which was adopted in 1873 would in this instance have availed with "a practical certainty" to prevent suspension, and that the banks were negligent of their own best interests and of their obligations to the public in not equalizing their reserves. Whether the equalizing of reserves would have prevented suspension in 1893 any more than it did twenty years before appears to me to be much less probable than the "practical certainty" which Professor Sprague maintains. That it would have helped the situation materially I think there can be little doubt, and I believe with him that there was a heavy moral obligation upon the New York banks, as the holders of a large part of the country's ultimate reserves,

<sup>1</sup> Sprague, p. 181.

<sup>2</sup> *Ib.*, p. 183.

to resort to this measure before yielding to suspension. As he points out, if suspension must ultimately be resorted to, it makes little difference (under suspension) whether cash reserves are high or low. "Whatever excuses may be made for suspension," Professor Sprague says,<sup>1</sup> "it was wholly without good cause that the banks persisted in this policy while their reserves were increasing in the rapid fashion which marked the last two weeks of August." To this I believe the reply may properly be made that suspension was never complete, some cash being paid out during the entire period, that the amount of such payments increased the latter part of August, that it was not until August 28th that the House of Representatives voted to repeal the silver-purchase clause, that the crop-moving demand for cash was becoming strong, particularly in the south, and that such a drastic measure as suspension once having been taken, the banks were not subject to much censure for refraining from returning to complete cash payments until they felt that the situation was well in hand. There was an average deficit in the reserves of the New York banks for the week ending August 26th of \$6,700,000, and for the week ending September 2d of \$1,600,000. The ratios of reserves to deposits for these two weeks respectively were 23.2 and 24.6.

#### CRISIS OF 1907

The last crisis to consider, and in many respects the most serious one the country has had, is that of 1907. The events of October and November of that year, the financial losses, the hardships and the anxieties, hold too vivid a place in our memories to require description here, and we may pass at once to a consideration of the banking situation as it was immediately before and during the crisis.

For some years the United States as well as Europe had been passing through a period of almost unprecedented business expansion and speculative buoyancy; prices of commodities and stocks, dividends, interest rates, and wages were advancing, largely under the influence of phenomenally increasing gold

<sup>1</sup> Sprague, p. 190.

production. In the United States the business community was optimistic almost without bounds. Bankers shared in this optimism, and banking credit was unduly extended. For national banks as well as for other kinds of commercial banks the percentage of capital to other liabilities had greatly decreased during the preceding ten years,<sup>1</sup> likewise the percentage of cash holdings to deposits.<sup>2</sup> Trust companies had shown a phenomenal growth in numbers and in the amount of strictly banking business which they were doing; and being at the time altogether inadequately controlled either by the government or by the clearing houses, they represented a weak spot in the banking situation.

Despite the frequent warnings of an impending crisis, and the stock market panic of March 1907, the national banks of the country at the time of the August 22d statement to the comptroller were in what was for that time only a normal condition of strength, and this, says Professor Sprague,<sup>3</sup> "was not on account of any exercise of restraint in making loans, since the increase during the previous twelve months was greater than for any other year of the period under review". While Professor Sprague's statement is true that the figures show no evidence of restraint on the part of banks in making loans, his assertion that the increase during the previous twelve months was greater than for any other year of the period under review is misleading. It is true only if one compares absolute amounts, but the country's banking business had grown greatly since 1897, loans of national banks had more than doubled, and comparisons of this sort should obviously be in terms of percentages. On such a basis the increase for 1907 over 1906 was but 9 per cent, while that for 1899 over 1898 was 15 per cent and that for 1901 over 1900 was 12 per cent.

Analyzing the conditions of the different groups of banks, our author concludes that "leaving the New York banks out of consideration, every group of banks except those of St. Louis was in a slightly stronger condition in 1907 than in 1906;

<sup>1</sup> National Monetary Commission, *Statistics for the United States*, p. 30.

<sup>2</sup> *Ib.*, pp. 31, 33, 34 and 36.

<sup>3</sup> Sprague, p. 219.

and all, judged by the average of the preceding half-dozen years, were in a normal condition of strength; but as their condition was somewhat less strong than at the time of the reports immediately preceding the financial crisis of former years, it should have been evident that in case of an emergency the pressure upon the banks of New York would be even greater than in the past."<sup>1</sup> During the preceding ten years the loans of the New York banks had not increased so rapidly as those of national banks in general, and throughout the period New York banks "were evidently handling their loan account so as to keep just above the 25 per cent requirement against deposits".<sup>2</sup> "New York still maintained its commanding position as a debtor of national banks,"<sup>3</sup> but the New York banks were under no greater relative obligation to other national banks than they had been during previous years.<sup>4</sup> The New York situation, however, had been much weakened as compared with that of 1897 by the tremendous growth of trust companies and state banks,<sup>5</sup> and by the very large extent to which these institutions, whose reserves were "notoriously inadequate," kept them on deposit in national banks. This obviously meant a great increase in the burden and the responsibility placed upon New York's national banks; for in an emergency such deposits of reserve money would certainly be quickly called for. The close affiliation between many national banks and trust companies, and the ease with which loans, deposits, and reserves might be "shifted" from one to the other, greatly obscured the situation, and during the years before the crisis, "the surplus reserve became quite as much an object of mirth as of confidence".<sup>6</sup>

As in the crisis of 1873 and 1893 a few interest-paying New York banks held the great bulk of bankers' deposits—those both of national banks and of other banks—but these banks, now six in number, had grown greatly in their relative position. In 1873 the seven banks which held the lion's share of bankers' deposits "controlled only about 30 per cent of the resources of all the New York national banks. In 1907 the six banks con-

<sup>1</sup> Sprague, p. 221.

<sup>2</sup> *Ib.*, p. 222.

<sup>3</sup> *Ib.*, p. 223.

<sup>4</sup> *Ib.*, p. 224.

<sup>5</sup> *Ib.*, pp. 224-228.

<sup>6</sup> *Ib.*, p. 228.

trolled over 60 per cent of the total. . . . The ability of the other banks to assist the six banks in an emergency, as was done in 1873, was clearly very much lessened; at the same time the power of the six banks, taken together, to cope with an emergency was vastly increased".<sup>1</sup>

Another factor weakening the situation was the large and increasing amount of loans made by outside banks in New York City; <sup>2</sup> the loans made by interior banks in New York City were estimated to have amounted in 1906 to no less than \$300,000,000.<sup>3</sup> "The outside banks," says Professor Sprague, "feel no responsibility for the course of the market. They will naturally withdraw from it when affairs at home require more of their funds or when they have come to distrust its future. It therefore becomes necessary for the local banks in the money center to be able at all times to shoulder at least a part of the loans which may be liquidated by outside banks, and also to supply the cash which they thus secure the power to draw away."<sup>4</sup>

The large government surpluses of the period and the "grandfatherly attitude towards the banks" adopted by the government, especially by Secretary Shaw, he thinks,<sup>5</sup> "tended positively to encourage unsound banking." He is disposed, however, to minimize the influence of this factor and, I think, underestimate its importance. This grandfatherly assistance, I believe, had materially weakened the sense of public responsibility on the part of the banking community—weakened it out of proportion to the actual amounts of money involved.

Taking these and other influences together, Professor Sprague concludes<sup>6</sup> that the New York money market was far more subject to severe strain in 1907 than at any other time covered by his investigation.

Passing over the work of the committee of trust-company presidents in relieving the strained situation at the approach of the October panic, and the useful services performed by Mr. J. Pierpont Morgan in forming the money pools of October 24th

<sup>1</sup> Sprague, pp. 233, 234.

<sup>2</sup> *Ib.*, pp. 228, 229.

<sup>3</sup> Noyes, *Forty Years of American Finance*, p. 356.

<sup>4</sup> Sprague, p. 229.

<sup>5</sup> *Ib.*, pp. 230, 231.

<sup>6</sup> *Ib.*, p. 230.



and 25th, we may next note one of the most striking features of the panic, *i. e.*, the lack of confidence in banking institutions. The runs upon the trust companies naturally resulted in heavy demands upon clearing-house banks for the trust-company reserves which these banks held on deposit; and

everywhere the banks suddenly found themselves confronted with demands for money by frightened depositors; everywhere, also, banks manifested a lack of confidence in each other. Country banks drew money from city banks and all the banks throughout the country demanded the return of funds deposited or on loan in New York.<sup>1</sup>

It was not until Saturday, October 26th, that clearing-house loan certificates were authorized, and Professor Sprague contends that the failure to issue them at least as early as the preceding Tuesday was the most serious error during the crisis.

Immediately upon the issue of clearing-house loan certificates cash payments by the banks were restricted. A currency premium appeared October 31st and continued, to the great disturbance of trade, both domestic and foreign, for nearly two months. Professor Sprague discusses at length the situation of the New York banks just before suspension, and concludes that the situation at the time and the prospects afforded no justification whatever for such a "discreditable step."<sup>2</sup> His argument here loses force somewhat by reason of the fact that the figures of the weekly bank statement upon which he is compelled to depend are average figures for the week, and do not show the situation from day to day or upon any particular days. Obviously the average figures for the statement of October 26th, for example, might be very favorable, although the situation on, say October 25th, had been most unfavorable. Here Professor Sprague is compelled to resort to estimates and guesses of more or less doubtful validity, although it should be said that for the most part his estimates appear to be reasonable and conservative. His analysis<sup>3</sup> of the figures for the bank statements of October 19th and 26th brings out some striking differences among the six most important banks. Immediately after the

<sup>1</sup> Sprague, p. 259.

<sup>2</sup> *Ib.*, p. 261.

<sup>3</sup> *Ib.*, p. 267.



authorization of clearing-house loan certificates the banks adopted the wise policy of extending their loan accounts. They did not, however, adequately meet the demands for cash payments, and resorted to suspension, Professor Sprague believes,<sup>1</sup> altogether too readily. "It cannot be questioned for a moment," he says, "that suspension would not have occurred" had the banks resorted in 1907 to the arrangement of equalizing reserves as they had in 1873. Suspension, moreover, having once been adopted, was continued altogether too long, he says, claiming<sup>2</sup> that "for this prolongation of suspension there was not even a shadow or semblance of excuse."

With the subsequent course of the crisis we need not be concerned here, any more than to observe that foreign exchanges were seriously disturbed, domestic exchanges were dislocated, suspension extended throughout the country, and substitutes for cash to the estimated amount of over \$500,000,000 were issued "without the sanction of law."<sup>3</sup> This is not a very creditable chapter in financial history for a progressive country like the United States.

Professor Sprague, it will be seen, though finding numerous defects in our banking system, is disposed to place a large share of the blame for our troubles in recent crises upon the banking community, and particularly upon those New York City banks which have held the lion's share of the country's deposited banking reserves. His arguments are strong, though not so final in many cases as the strong language of his conclusions would seem to imply. The book will exercise much influence upon intelligent public opinion, and it is the duty of the bankers in this city, with their wealth of inside information, to disprove his conclusions if they are false.

How far the blame for our too frequent and disgraceful financial breakdowns belongs to individuals and how far to our unscientific and cumbersome banking system, is a most difficult question to answer, and I shall not here attempt any apportionment of responsibility. One thing is certain, however. The

<sup>1</sup> Sprague, p. 273.

<sup>2</sup> *Ib.*, p. 278.

<sup>3</sup> A. Piatt Andrew, Substitutes for Cash in the Panic of 1907, *Quarterly Journal of Economics*, August, 1908, pp. 515 and 516.

banking business, like the railroad business, is "affected" with a very large public interest, and the bankers of this city—the dominant money market of the country—have a great public responsibility. They are to a very high degree public trustees. I am glad to say that there are signs of a growing sense of this trusteeship.

#### SUGGESTIONS FOR REFORM

A study of the crises of 1873, 1893 and 1907, and of the numerous minor critical periods in the financial history of the last generation is not calculated to impress one with the smooth working of our banking machinery. No other advanced country in the civilized world has experienced such a disastrous series of financial collapses, suspensions, disrupted exchanges, and currency makeshifts during the past forty years, as the United States. I would be the last to maintain that these unfortunate experiences have been principally due to our defective banking machinery. We have been running too fast to avoid stumbles. I do believe, however, that the serious defects of our banking system have been very great stumbling blocks.

Your committee have asked me to make positive suggestions looking toward the more perfect functioning of our banking system in times of crisis. I am not one of those who have a panacea for currency and banking ills, and the few rather commonplace suggestions I have to make at this time are tentative, and, like railroad time tables, "subject to change without notice."

As regards its functioning in times of threatened and actual crisis, the most serious defects of our banking system are, broadly speaking, two in number. The first is lack of coördination and centralization. The different parts work at cross purposes and without leadership at just the time when coöperation under leadership is most needed. There is nothing so unreasoned as a panic. It is an illustration of the mob mind, and like a mob can be handled effectively only by a leader acting with promptness and decision. The second defect is lack of elasticity not only in bank-note circulation, but in bank credit in the broader sense of the term. As has been frequently

pointed out, American paper is essentially local paper. The national banking act as interpreted by the courts prevents the acceptance by banks of time bills drawn on them.<sup>1</sup> The rediscount business among our banks is almost negligible, amounting to a very small fraction of one per cent of the loans and discounts,<sup>2</sup> and unlike European countries "we have no modern and readily salable paper which in critical times we can offer to foreign markets."<sup>3</sup> When we add to these facts the extremely inelastic character of our bank notes, the rigid nature of our legal reserve requirements, and the fact that being to a very considerable extent an agricultural country, our seasonal variations in the demand for money and capital are very pronounced,<sup>4</sup> we see that we are a country in which elasticity of currency and credit is both particularly important and peculiarly lacking. The relations between our treasury department and the national banks, moreover, encourage on the part of banks the practise of depending upon the government for aid in times of emergency, and tend to prevent the banks from making independently, in advance, proper provision for the regularly recurring heavy seasonal demands, to say nothing of crises. It is well to note in this connection that crises are most liable to occur in those seasons which are normally characterized by a stringent money market.<sup>5</sup>

<sup>1</sup> Cf. list of cases cited in *Comptroller's Report*, 1904, vol. iii, pp. 5, 6 and 7; also Morse, *Banks and Banking*, 4th ed., vol. i, pp. 348 and 349; L. M. Jacobs, *Bank Acceptances* (National Monetary Commission); and Paul M. Warburg, *The Discount System of Europe* (National Monetary Commission Publications).

<sup>2</sup> It is well known that rediscounting is sometimes done in a covert way and under guise of other transactions. Comptroller Murray said in an address at the meeting of the National Association of Supervisors of State Banks, September 12, 1910, "Rediscounts are often made through the alleged 'sale' of the bank's paper, which is endorsed 'without recourse.' There is almost always, however, a separate agreement that if the paper is not collected at maturity, it is to be charged back to the selling bank, so that it really constitutes a concealed liability."—Circular Letter of National City Bank, October, 1910.

<sup>3</sup> Paul M. Warburg, Central Bank of the United States, *American Economic Association Quarterly*, April, 1909, p. 342.

<sup>4</sup> Cf. Kemmerer, *Seasonal Variations in the Demand for Money and Capital* (National Monetary Commission Publications).

<sup>5</sup> *Ib.*, p. 222-223.

For these reasons I believe in a central bank. The size and complexity of our banking machinery, instead of being an objection to such an institution, as Professor Sprague finds it, is to my mind one of the strongest arguments in its favor. The country is adequately supplied with commercial banking facilities, and there is no need of a central bank to deal directly with the public. There is, however, a need for a bankers' bank which will deal exclusively with banks and serve as the capstone of our banking system. This would be, not a revolution in our banking methods, but one further step in their evolution. I see no other way of obtaining prompt and effective action for the prevention and control of crises and at the same time of obtaining a credit elasticity which is both adequate and safe.<sup>1</sup> If the government does not provide such an institution, there is reason to believe that the further development of community of interest among a few large financial concerns of the country, particularly of New York city, will bring about a centralized control without adequate government control or adequate publicity. In other words, it is not so much a question as to whether we shall have centralized control or not, as it is whether that control shall be exercised in the open, along lines laid down by the government, or *sub rosa* along lines of natural development under the motive power of a narrower self-interest.

This is not the place to give a detailed plan for a central bank, and the planning of such an institution, I realize, is largely a matter of detail. A few general postulates, however, may be expressed categorically.

(1) The capital should be substantial, certainly not less than \$150,000,000, and should be held only by banks; the voting power should be widely diffused, and rigid provisions should be made to prevent its being directly or indirectly con-

<sup>1</sup> It is interesting to note that Professor Sprague, who has proved such an able critic of the central bank idea, has very great confidence in the efficacy of equalizing reserves in times of crises, and says that during the continuance of this equalized-reserve arrangement in 1873 "the banks were converted, to all intents and purposes, into a central bank, which, although without power to issue notes, was in other respects more powerful than a European central bank . . ."—*History of Crises*, p. 90.

centrated in a few banks. Possibly an arrangement something like this would have some efficacy. Every bank with an unimpaired capital and surplus amounting to less than \$100,000, and owning at least  $X$  shares of stock, should have one vote; every bank having an unimpaired capital and surplus of from \$100,000 to \$1,000,000 and owning at least  $2X$  shares of stock should have two votes, every bank having an unimpaired capital and surplus of from \$1,000,000 to \$5,000,000, and owning at least  $3X$  shares of stock should have three votes, and every bank having an unimpaired capital and surplus of \$5,000,000 or above and possessing at least  $4X$  shares of stock should have four votes. (2) While there is no need of the government's owning any stock, there should be a very substantial representation of the government on the board of directors, including *ex officio* the secretary of the treasury and the comptroller of the currency. The power of the government's directors should be real, not merely nominal, as was so frequently the case in the Second United States Bank under the presidency of Nicholas Biddle.<sup>1</sup> Moreover, when acting with substantial unanimity they should possess an effective veto power on important measures. (3) There should be a high degree of publicity in the bank's affairs, and frequent examinations and public reports. (4) The banks should benefit from the central bank, primarily in the control it exercises in stabilizing the money market, providing a sure place for the rediscounting of high-grade commercial paper, influencing the movement of gold, and taking the initiative and inspiring confidence in time of threatened or actual crisis. It should be primarily a centralizing and regulating institution, not a money-making one. The government should participate in its profits in a progressive way similar to the German govern-

<sup>1</sup> The government directors in a letter to President Jackson, dated October 8, 1833, said, "After this detail of incidents, and recollecting all that has occurred heretofore, you will probably agree with us, that the directors on the part of the government, at the board of the Bank of the United States, are utterly unable to perform the services which are due to their constituents." They also sent a memorial to Congress setting forth how they were rendered powerless as government directors, and how the most ordinary rights of inquiry were denied them.—*House Executive Documents*, 23d Congress, 1st session. I, Document no. 12. Quotation is from p. 40.



ment's participation in the profits of the Reichsbank. (5) It should become the depository of public funds, displacing our present antiquated and hybrid "independent-treasury-national-bank-system." (6) It should have the power of issuing an asset currency to the amount of its capital stock against high-grade commercial paper without special taxation, and to an indefinite amount in addition, though subject to a substantially progressive tax. A cash reserve of at least 33 $\frac{1}{3}$  per cent should be required against both net deposits and note issue, but the reserve should be usable in times of need, provided the bank paid the price, which should be a progressive penalizing tax based upon the degree to which the reserve was reduced below the legal minimum. In other words there should be substantial financial penalties to the undue expansion of the loan account, but no absolutely fixed limits. (7) In the course of time the present bank-note circulation should be somewhat reduced in relative amount, limited to a fixed percentage of capital, and placed upon an asset basis, with a required legal reserve and with double liability of stockholders, prior lien on assets, and a guaranty fund. Adequate provision should be made for the protection of holders of bonds when the privilege of issuing notes against them is taken away.

Aside from the proposition for such a central bank, which I realize contains few elements that are new, I wish merely to mention three supplementary points.

For years there has been much opposition to the practise of paying interest on bankers' deposits, although the opposition was much stronger a generation ago than it is today. The arguments against this practice advanced by the clearing-house committee, of which George S. Coe was chairman,<sup>1</sup> on November 11, 1873, to my mind, have never been answered. I believe that the evils of the practise outweigh the benefits, and wish the clearing-house association could of its own accord prevent its continuance. If this is impracticable, I believe that the government should recognize plainly the volatile character of bankers' deposits of reserve money, and should raise the legal reserve requirement for such deposits to at least 40 per cent.

<sup>1</sup> Quoted by Sprague, *History of Crises*, pp. 91-103.



The unfortunate influences on the banks, and on the money market generally, resulting from our system of caring for public funds, might possibly be mitigated for the time being if the government would decide what is a desirable working balance to be kept in the independent treasury, and should then keep the remainder on deposit in banks, making it clearly understood that the banks could not count upon any increase of federal deposits either in the fall, or in times of threatened panic.

Finally, let me say that I heartily sympathize with Professor Sprague's<sup>1</sup> proposal that national banks be authorized to establish true savings departments "with segregated deposits payable at notice, which might be invested in mortgages." In the carrying out of such a plan, it is perhaps needless to say, great care should be taken to prevent the juggling of accounts.

<sup>1</sup> *Quarterly Journal of Economics*, xxiv, pp. 203 ff., and 654 and 655.

## BANK NOTES AND LENDING POWER<sup>1</sup>

BY J. LAURENCE LAUGHLIN

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**I**N the panic of 1907 it was impressed on the public and on Congress that our monetary system was not of the kind that could successfully withstand the stress of a coming monetary stringency, or the greater dangers of a serious financial collapse. These impressions have led to the widespread demand for monetary reform, to the appointment by Congress of the National Monetary Commission, and the publication by this commission of a great mass of material on money and banking. These volumes may help in the education of Congress, but, because of their bulk, they are not likely to help very much in the education of the public. From these volumes, however, and from knowledge previously in our possession, the lessons to be had from other countries, as well as from our own country, must inevitably be drawn upon in framing the concrete proposals of the commission to Congress. Moreover, under our political methods, it is not a question as to what outside experts may propose, but what the leaders in Congress think can be passed through both houses under the present conditions of public opinion (educated, of course, as far as possible). This situation we must keep in mind in all our discussions. The lessons to be got out of these volumes, and the inferences from them which are applicable to conditions in the United States can without doubt be very simply presented. If so, and if made intelligible to the general public, there is a good chance that they can be impressed upon Congress and enacted into law.

We must of course beware of the man with cut-and-dried system, who has a beautiful theory sure to prevent all panics and to cure all the ills of industry. As in the case of any dis-

<sup>1</sup> A paper presented at the meeting of the Academy of Political Science, November 11, 1910.

ease, we must first find out what is wrong, and next try to discover a remedy to meet the particular ill. First, then, as to the difficulties disclosed in the past which must be overcome by a correction of our monetary system. Very recently Secretary MacVeagh, by his urgent suggestions to the national banks to organize currency associations under the Aldrich-Vreeland Act, of March 30, 1908, in order to be prepared for an expansion of bank notes in case of an unexpected emergency, has consciously or unconsciously indicated his belief—so far, of course, as his recommendation may indicate a belief—that monetary and credit emergencies can be met by the issue of bank notes. On the other hand, if his words were correctly reported, the chairman of the National Monetary Commission expressed the belief that the problem was not so much one of the circulation as it was one of the organization of credit. The problems, therefore, to my mind, seem to center about bank notes, on the one hand, and the power of a bank to lend on the other; (1) the needs of the public for currency, and (2) the needs of a bank when under pressure in meeting demands for loans.

The need of the public for currency to act as a medium of exchange in buying and selling goods, in paying wage rolls, in travel, etc. are obvious. In certain sorts of transactions, mainly in a part of retail trade, and in districts unused to banking methods, some form of money must be passed from buyer to seller. In total amounts, however, these transactions are insignificant in comparison with those transactions on a large scale which are carried on by checks, drafts, or bills of exchange—without the use of any form of ordinary money. With an increasing population, but chiefly with the increasing products bought and sold at retail, the demand for currency, such as it is, must normally increase absolutely in greater or less sums. For such needs an elastic bank-note circulation, slowly rising—but expanding and contracting sharply with seasonal demands—is imperative. Our present national bank circulation does not provide for this elasticity. It expands and contracts without any direct relation to the demands of the community. To this point of elasticity much emphasis has been directed; and I

do not wish to minimize its importance; but it is to be doubted if it is as vital as some suppose. If we used only bank notes (or other paper money) as a medium of exchange, the insistence upon an elastic bank-note circulation would be of first importance; and, in the limited field in which actual money is imperative, the need of an elastic bank-note issue to the general public remains highly important. Although we have the deposit currency as a medium of exchange which is perfectly elastic, the elasticity of note issues should receive attention in the due proportion of the importance of bank notes to other media of exchange, under normal conditions of business.

Still keeping in mind, however, the needs of the public for a medium of exchange and not the needs of the bank itself, it will probably appear to many that the demand of the public for expanding issues of currency is of vital importance in a time of financial distress, such as that in the autumn of 1907. To those who set most store by the virtues of an elastic bank-note issue, this seems the crux of the whole matter. It is supposed in a time of stringency that the public will demand more circulation; and to support this view the events of the panic of 1907 have been drawn upon as proof. It is true, of course, that government or bank notes could not be had in most cities during the height of the panic in 1907, even in small sums; and, as a consequence, the clearing house associations issued clearing-house notes (as distinct from clearing-house loan certificates) for circulation among the public. Without doubt, this inability to get cash for a small check on a bank, or at a paying office, made a deeper impression on the minds of the people than any other event during the panic. It was this popular belief in the need of more money to which Congress evidently catered when it passed the Aldrich-Vreeland Act, as a provisional measure before a coming election in 1908. It was, as everyone must admit, a striking commentary on the inadequacy of our banking and monetary system, that it was impossible for the banks to supply to employers of labor, and for the small needs of every day, a relatively small amount of currency having a general circulation. Yet, on the other hand, it is a fact that the total amounts of the clearing house notes for the use of the public were not

large, nor were they long outstanding. Moreover, as affecting the ability of the producing and trading firms to weather the stress of the panic, they had practically no influence whatever. The banks were more frightened than the public. The demands of the small local banks for additional precautionary reserves drew down the cash reserves of city banks more than did the demands of business men. This was the reason for the scarcity of circulation. The holding on to their cash by city banks was primarily in the interest of reserves, and therefore in the interest of those who wished loans, or who had to be carried for a time.

The power to expand their note issues (which are liabilities) could not have added to the cash reserves of the banks, and thus have enlarged their power to aid needy borrowers. It is true, however, that an expansion of note issues would have aided the banks indirectly; it would have allowed them to satisfy the urgent demand for a medium of exchange on the part of the public by passing out their notes and thus being able to retain lawful money, which could be used as reserves to support their loans and deposits. But, primarily, the issue of bank notes is for circulation in the hands of the public, and not for any serious advantage which they render in increasing the power of the bank to lend, and to stave off a panic. Accordingly the prevailing idea that we must provide against future panics, and avoid a repetition of what happened in the panic of 1907, by arranging for the rapid issue of bank notes in a time of emergency is quite aside from the real point; for it is based on the wrong assumption that it is the lack of currency in the hands of the public, and not the difficulty of the banks in lending, which is the critical thing at such a time.

This popular insistence on the view that we can prevent the occurrence of panics, and meet all the dangers of a financial crisis once it is upon us, by the device of an expansion of bank notes is, in my judgment, based on an erroneous analysis of banking operations in times of pressure. Very respectable authorities have asserted that our monetary system is radically at fault so long as it will not prevent the occurrence of panics. And the belief that the Bank of England or the Bank of France—as central institutions—have been able to head off speculation

and avert the evils of expanded credit, is referred to as an instance of what can be done by a central institution in this country. We have been led to think that the issue of notes is the means by which the effects of a crisis are met and its inconveniences reduced; in the case of England by the suspension of the bank act bringing out more notes from the issue department; and in the case of France directly by the increase of notes of the Bank of France. As we shall see later this appeal to the banks of England and France is wholly unfounded in fact.

The reserve city bank which can quickly increase its own notes can supply the demands made upon it by country national banks and correspondents,—provided the country bank wishes only currency for circulation in its neighborhood, and not for its own reserves. Here again, the new bank issues do not give the pivotal aid which some suppose always comes from additional circulation. Not being lawful money, they could not be used in reserves, and thereby would not—and could not—improve the lending power of the local country bank. They would, however, supply currency to the country bank which could be paid out if urgently demanded, and thus indirectly protect reserves.

Another advantage in emergency bank notes, of course, is the opportunity it presents to national banks having relations with state banks and trust companies. By issuing their own notes they may exchange them for lawful money held by banks outside the national system. In this way they can indirectly increase their lawful money, and consequently their power to lend.

All the above advantages are patent, and are arguments in favor of a margin of elastic note issues. But these issues have only a limited importance, and would not cure the fundamental difficulties existing in times of panic. The principal reason for this statement exists in the fact that obviously the bank cannot replenish its reserves, which are an asset, by an addition to its own notes, which are a liability. Apart from its illegality, it is a banking lie.

Moreover, the use of its cash resources in the direct purchase of any kind of bonds or securities to be deposited for the pro-



tection of its emergency notes would not only not improve, but really reduce the power of a bank to lend, and thus reduce its ability to aid needy borrowers. A sum of \$100,000 in lawful money in the reserves would allow loans and consequent checking accounts of from \$400,000 to \$600,000, when borrowers are calling for help—provided borrowers used checks as a means of payment. Therefore, a bank would cripple itself, should it invest \$100,000 of lawful money in securities in order to issue only \$100,000 of notes, thus allowing loans of only the same amount. Consequently, no system of note issues based on the purchase of securities by cash will touch the centre of the need.

Finally, too much is made of the need of an elastic bank circulation in a time of panic, in view of the fact that we already have a perfectly elastic medium of exchange in our deposit currency, especially for all large transactions. The term "money" is loosely used. We use gold as a standard, but we do not use it to any appreciable extent as a medium of exchange. More than ninety-five per cent of our large transactions are performed by a check and deposit currency which rises and falls exactly in proportion to the exchanges of goods which call forth loans and bank deposits. Under existing familiar methods of payment by checks and drafts, the borrower who is able to get a loan, in a time of stress, has no difficulty whatever in meeting his maturing obligation by a check on a solvent bank. To get the loan is the important thing—not the particular form of liability which the bank gives him on making the discount. In fact, on getting the loan, the borrowing merchant would not wish to take out notes, and then be obliged to find a place in which to deposit them again. It is clear, therefore, that the mere power to issue bank notes in itself is not the only, or the most important, way of meeting an emergency brought on by a disturbance of credit.

We have heard much in this country about the need of an elastic bank currency. About a marginal elasticity to a large total circulation, in normal conditions, for seasonal demands, I have already spoken. There is no difference of opinion concerning that need. But most persons who advocate an elastic

currency have in mind a need of a very different kind—the need of help to borrowers in a time of panic. For a need of this kind, careful examination will disclose that the issue of bank notes is of minor importance and does not touch the real cause of difficulty at such a time. I say of minor importance; for the ability to pay off depositors in bank notes would undoubtedly give to customers of a bank the means of meeting maturing indebtedness. But the serious pressure comes from those whose deposit accounts are insufficient to meet heavy panic demands; then will the power to issue more notes (a liability) enable a bank greatly to enlarge its loans, without having thereby received anything which will increase its cash reserves? That depends entirely on what system of note issue we are going to adopt, and whether cash reserves are to be required for the notes as well as for demand deposits. If the latter, the power to issue notes would be of no assistance whatever in making additional loans to hard-pressed borrowers. In fact, in the proposed bill of the American Bankers' Association in 1908, I believe a reserve against notes was required. In short, there is no little confusion of mind as to the thing really needed in a time of panic.

It is a crude thought that an increase of bank notes is needed by the general public as a medium of exchange because of the inability of business men to exchange goods due to a scarcity of currency. The real difficulty resides not with the general public and the media of exchange—for checks are as good as ever as a medium of exchange if there are deposit accounts on which they can be drawn—but with the banks, with the power of the banks to expand their loans in a time of stress. This is the pivotal thing in any plan to relieve the distress of a financial panic (even with those who are urging an elastic currency as a cure-all).

### III

So much for the relation of bank issues to the situation created by a financial crisis; but, as has been already pointed out, there are other elements in the situation of far greater importance. When we look back to the panic of 1907 we find

three important happenings, connected in purpose and need, and which altogether transcend the minor question of the issue of notes, or clearing-house currency for public use. These three points of central importance have to do with the lending power of the banks, and are as follows:

1. The importation of gold.
2. The deposit of lawful money with the banks by the Treasury.
3. The issue of clearing-house loan certificates.

Every banker, every borrower, who was concerned with the work of preventing disaster from spreading in 1907, knows how dominating were these three matters. Why? Because they directly touched the power of the banks to lend. There was a crisis, not because of a scarcity of a medium of exchange in the hands of the public, but because the central banks had had excessive demands made upon them for loans, and because they held paper which had become more or less unsound. A crisis comes because credit has been unduly expanded in a period of prolonged prosperity; in an optimistic spirit men have entered into transactions beyond their actual means, as is shown when the test of actual payment is exacted; and in a time of fright collateral as well as goods fall in price. In such a situation liquidation needs time if disaster is to be prevented. The banks are called upon to carry houses doing a legitimate business that are in trouble. Just when timid persons, or country banks, are drawing down cash reserves, the banks are forced by the situation to increase their loans. In the one week ending Nov. 2, 1907, the reserves of the New York banks fell \$37,000,000, while loans were increased \$60,000,000. That showed that the New York banks met a difficult situation with courage and good judgment. At their own risk they came to the rescue of a hard-pressed business public. Everything centered on those things which would aid the lending power of the banks. It is needless to say that the issue by the bank of its own liabilities in the form of notes would be an insignificant palliative, and would not touch (except as before mentioned) the cash reserves, and the power to lend. The one central thing to be done was to increase reserves. Here is the crux of the whole

matter, whether it is a time of impending stringency or the storm center of a crushing panic. The bank's own notes (its own liability) cannot legally or morally be used to fill up its reserves (the bank's active asset). Here is the fatal deficiency of bank-note issues as a means of curing a panic. In 1907 the one thing needed was lawful money which could be used as reserves. We must face facts, and not be led away by theories. The New York banks got this lawful money in two ways: (1) by importing gold, and (2) by deposits from the treasury.

(1) They imported gold as a means to enable them to aid needy borrowers. They used their resources to buy or borrow over \$100,000,000 of gold, because it was one of the forms of lawful money by which reserves could be filled up. By anyone who had the means of purchase, gold could be got in a week from Europe. Therefore, gold proved to be the one part of our monetary system, besides checks on deposits, which was perfectly elastic. It could be increased by importation, or decreased by exportation, at will.

(2) But gold was not the only form of lawful money. When banks were being drained of their reserves, the main recourse was to the treasury of the United States. Unlike bank notes, government deposits directly increased the reserves, and increased the lending power of the banks from four to six times the deposits. The secretary, in leaving the largest sums in New York banks, the centre of the disturbance, gave his aid where it would do the most good. It is obvious that the service rendered by the importation of gold and the deposits of lawful money by the treasury could not have been accomplished by issues of bank notes.

(3) The most important of the devices resorted to in 1907, however, as well as in former panics as far back as 1861, was the issue of clearing-house loan certificates. What was the point of their issue? It was not that the country needed more money for general circulation, or more media of exchange—but that the banks whose reserves had run down needed aid for the purpose of lending to hard-pressed borrowers. In a crisis what is wanted—and wanted above all other things—is the loan. Once given the loan, the borrower has no difficulty in finding a

medium of exchange, by which he can transfer his credit in a way to satisfy his maturing obligation. The loan is the primary thing. All that the creditor demands is a means of payment acceptable in his community. It is just at this point that I venture to say we find the most confusion of thinking and the greatest amount of loose talking. It is carelessly assumed that the great need is an issue of bank notes, when in reality the great need is some means, whatever it may be, which will enable a bank to make loans to a client, who can thereby be saved from failure and from hasty and ruinous liquidation. The whole object of clearing-house loan certificates, then, is not to provide currency, but to make loans possible to needy and legitimate borrowers. After loans are made, checks provide all the means of payment anyone needs. The increase of a bank's liabilities does not increase its reserves, or its power to lend; so that the issue of bank notes, except as above indicated, is wholly aside from the point.

#### IV

Since the publication of many volumes by the National Monetary Commission, we are likely to hear much about the experience of the great banks in Europe.<sup>1</sup> But deductions from Europe, as has been pointed out by the chairman of the commission, must be made with caution. In England, conditions as to payments by deposit currency are much like our own; but in France very little work is done by checks drawn on deposits, and nearly all by the notes of the Bank of France; and much the same is true of Germany. Thus the same general principles of banking would work out in England, France, Germany and in the United States, but through very different instruments.

In England, in a crisis, aid seems, on the face of things, to be rendered by an increase of the Bank of England notes, when the Bank Act of 1844 is suspended. In fact, as you know, the act has not been suspended since 1866; and even when sus-

<sup>1</sup> In all there are no less than ten volumes issued by the National Monetary Commission on European banks, amounting to 4096 octavo pages (of which that on the German Bank Inquiry of 1908 alone contains 1162 pages) to say nothing of other subjects treated. For students these works are highly useful and convenient.



pended, very little use of the new notes has been made. Why? The issue department is as much separated from the banking department as if they were different institutions, although under the same management. The gold and securities behind the notes in the issue department are entirely separated from the resources of the banking department. Therefore, the latter can use the notes of the issue department in its reserves. The whole point of the suspension of the bank act lies, then, in the fact that the banking department can fill up its reserves by taking securities to the issue department and getting notes for them, under a temporary suspension of the law. The immediate object is to increase reserves so that loans can be freely made; while the idea of getting out more notes into general circulation, on any theory that the public needs more money, is not at all considered. The mere possibility of a resort to suspension is sufficient to quiet alarm, because legitimate borrowers know they can get loans whenever required; and, therefore, practically no use is ever made of the new notes. Of late years the change in the rate of discount is sufficient to prevent reserves from falling to a point where suspension is ever necessary. Here again, in an emergency, it is a question of the lending power of the bank, and not the need by the public of more bank notes as a medium of exchange.

In France things are otherwise. An increase of loans by the Bank of France is necessarily carried through by an issue of more notes. Within the outside limit set by law, the bank can increase its issue at will. The essential thing, of course, is the ability to get a loan in an emergency; and, when that is obtained, then, as a matter of course the bank supplies the special form of liability which the business public demands—which in France is not a deposit account, but a note issue. Either would serve the same purpose as a means of payment; but that one is taken which custom prescribes, the check in England, the note in France. The fundamental thing is to be found in the power to lend, and not in the note issues. And back of that, it is the phenomenally high character of the short-time paper which allows the Bank of France to adjust itself quickly to changed conditions; together with the policy of keeping very high me-



tallic reserves behind the notes—perhaps eighty-five per cent. They escape panics in France by greater care than here in selecting only high-class paper at the central bank. Copper speculation, however, can bring disaster to a bank there as well as here. The Bank of France can maintain a low and uniform rate of discount chiefly because it is not a money-making machine and because it is exceedingly conservative in the kind of paper it discounts.

## V

Working directly from the facts of our own experience, and from a reading of the volumes of the National Monetary Commission, we may be permitted a very brief statement of the constructive measures which should be undertaken to prevent the excessive and ruinous results of credit expansions in the future.

(1) First of all, emphasis must be placed on the indisputable truth that no monetary legislation can prevent business optimism, over-trading, and recurrent waves of speculation and liquidation. The control and reduction of such movements, which are sure to be pressed upon banks by an eager, money-making public, lie primarily in the hands of the banks. The banks are the servants of their constituencies; as a rule, they do not lead but follow the demand of their customers; but they must be willing not to follow too recklessly. Not infrequently we hear it said that European countries, with large central banks, have a system which prevents panics. The truth is that panics have been largely avoided in the last thirty years in such countries as England, France and Germany, because the management has been cautious and conservative in granting loans. Quite irrespective of the external differences in banking organizations in the United States from the forms of organizations in England, France and Germany, we could as effectively suppress potential panics as they, if we were as willing to scrutinize loans.

(2) In the second place, we must not relax our efforts to satisfy the great want of an elastic bank circulation. We need what might be called marginal elasticity—a change of relatively small amounts on the margin of a fairly large normal circula-

tion,—dependent for its amount wholly on the demands of trade, and not on the fiscal needs of the government. The various bills presented to Congress—chief among which is the bill of the American Bankers' Association—bear on this general point. They are important; but, as previously explained, they do not provide a remedy for the situation existing in a time of panic. Expansion can go on and has gone on through the banking department of the Bank of England without the issue of any notes, and solely through the creation of deposit accounts as the consequence of expanded loans. Therefore, we must admit the fact that an elastic bank-note circulation, while bringing needed reforms, will not accomplish in times of stress what most persons have in mind at the present time when urging a change in our monetary system.

(3) Having now disclosed the real need, how can that need be effectively met? In the main, assistance must come in such a way that reserves can be enlarged with safety. Therefore, the emergency issues, if any are allowed, must be in some form of lawful money. How and by whom are they to be issued?

Certainly not by the government. The very first lesson of public finance is to learn to separate the fiscal from the monetary functions of the treasury. The state must separate its income and expenditures, its borrowings and payments, its fiscal duties, wholly and radically from its control over the monetary standard and the media of exchange. To confuse or to mix these, is to invite disaster at the first real crisis. Compare our chaos, when we confused these two things on and after February, 1862, when we made the first issue of greenbacks as a loan, with the stability of the French standard during the enormous expansion of loans in their crisis of 1870-3.

In brief, what is the essence of the remedy? Clearly enough, the lending power of a bank cannot be increased in an emergency by means of an increase in liabilities. It can come only by an operation dealing with its assets, and in such a way that a part of the assets, either bankable short-time paper or securities, can be transformed into means of payment which will enlarge the reserves. The whole emphasis should be put upon the matter of reserves. In the past, this work has, in

fact, been done either by using securities to import gold or to obtain government deposits, or by getting clearing-house certificates to the amount of seventy-five per cent of the value of chosen commercial assets. Such methods are irregular, voluntary, and clumsy. The underlying principles, however, should be incorporated into practicable, simple, legal means open to all, and well understood before any emergency arises.

The issue of clearing-house loan certificates has been, in my judgment, a means of averting untold disaster in many crises; the collateral behind them has been based on the fundamental business of the country; and they have always been retired at an early date without the loss of a dollar. Yet it is likely that as a practical device, they are somewhat clumsy, and possibly exposed to the ten per cent tax on state bank issues. Therefore they may be only the first step in an evolution to something even more effective, but built up on the same lines. It is always wiser to allow the remedy to grow out of our past experience, rather than to introduce an entirely new scheme to which it may take a long time to get adjusted.

Therefore, the central point of our banking reform, so far as I am able to suggest anything practical, is an organization for national banks, supervised by the government, but not under government management, which shall have the power, under regulations to secure great care in the selection of collateral, to transform picked assets and securities into forms of money which can be used as lawful reserves, with the usual requirements, by tax or otherwise for their early withdrawal as soon as the emergency has passed. This form of money need not appear in general circulation. This after all, is the essence of the operation in a crisis at the Bank of England—the country whose conditions are most nearly like our own. If we accept these principles and the general purpose, it would not be difficult to draft the law which should contain them.

We ought not to be wedded to names or preconceptions. It is immaterial whether such an organization is called a central bank or not. It is material, however, that it should accomplish the purpose of enabling a bank to meet a temporary paroxysm of credit by getting more reserves, and by increasing its lend-

ing power through the deposit of first-class collateral. My instinct is against any one large, centralized institution, the management of which might become an object of attack or a political prize in a campaign. It might be perfectly possible to secure a non-political management in fact, but you could never make the general public think so. So far as I can now see, it ought to be built up out of the present clearing-house organizations. There should be common action, and conference together of those who know the conditions of business in all parts of the country; but the actual judgment, when the quality of the paper and securities offered by a bank in order to obtain those reserve notes is to be passed upon, should obviously be given only by those in certain parts of the country who are familiar with persons and trade in the localities where the requests are made. Moreover, the relation of state banks and trust companies to the national banks in the larger cities, in a time of crisis, can be best regulated through organizations like the clearing-house boards. There should be no difficulty whatever in creating local or district clearing-house boards, chosen by the banks themselves—just as clearing-house committees are now chosen—who should pass upon the issues of those reserve notes. These district boards then might be united or represented for common action in a central board, who might have a veto upon the extreme action or the possible unwisdom of any one local board. The scheme has, moreover, the political advantage that it does not propose a money-making institution, nor a financial “octopus,” but a simple, direct method of enabling the borrowing public to get aid from banks in time of distress.

Were such an organization once put into operation, I am firmly convinced that we should henceforth be preserved from the highly terrifying and unnecessary paroxysms of credit which have characterized our past financial history. More than that, we should then come to understand by actual experience—just as in England since 1844—that expansions and liquidation of credit may come and go wholly independent of the quantity of bank notes outstanding. Attention will then be taken away from the minor question of the quantity of notes in the hands

of the public, to the vital question of the character of the credit granted, and to the vigilant control over the kinds of discounts made by a bank. From whatever angle we approach the banking business, we are always forced sooner or later to recognize that everything depends upon the quality of the discounts and the kind of assets held as a consequence of making loans. The measures recently put into force by the present comptroller of the currency, such as more stringent examinations, and the credit bureau, are to be highly praised because they bear directly upon this general principle. It lies at the center of all real insurance, or protection, to depositors; and it lies at the center of our whole question of banking reform which aims to relieve us of the disasters of sudden and forced liquidation in times of panic.

## RECENT TENDENCIES IN STATE BANKING REGULATION<sup>1</sup>

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THE banking question in the United States includes at least two problems. The more serious of these is the prevention of panics, such as those which occurred in 1893 and 1907. A less urgent, but important, problem is the minimizing of losses through bank failures. The two problems are not entirely distinct since panics, directly and indirectly, have been responsible for many of our bank failures, but the two may be considered as separate since most bank failures are due, not to the breaking down of the general credit structure, or the resultant depreciation in values, but entirely to causes peculiar to the particular institutions involved.

One of the great advances made by the national-bank act over the antebellum state banking laws lay in the superiority of those of its provisions which were designed to prevent the failure of banks and to minimize the loss to depositors consequent upon failures. Important amendments were made to the administrative features of the act in 1873 and 1876, which greatly increased its efficiency in this respect. Since the latter date, the national-bank act has remained essentially unchanged as far as its provisions for the regulation of banks are concerned.

When the state legislatures began about 1887 to build up anew their systems of bank regulation, they followed, although at a distance, the general plan of the national-bank act. Until very recently, the state banking laws might have been correctly described by saying that they represented all degrees of approximation to the national-bank act. Many of the state banking laws are still very far from rivaling the national-bank act in the

<sup>1</sup> The material used in the preparation of this paper was collected for the National Monetary Commission, and will be published in more detailed form in the publications of the Commission.



protection given to depositors. In some states no attempt has been made to secure the safety of deposits by the regulation of banks. In Arkansas, for example, state banks are incorporated on the same terms as other business corporations, the banks are not examined, and no power of supervision is given to any state official. Moreover, in very few, if any, of the states are the regulatory features of the banking laws in all particulars as well designed to secure the safety of deposits as those of the national-bank act. Within the last three or four years, however, the banking laws in several states have been amended with the avowed aim of making better provision for the safety of deposits than is made by the national-bank act.

These innovations have been of two different classes. In five states, since the panic of 1907, the legislatures have adopted, as the basis of their plans for securing the safety of bank deposits, some form of insurance, or guaranty of deposits through funds administered by the state. These laws have been fully described in two admirable papers recently published in the *Quarterly Journal of Economics* by Mr. Thornton Cooke,<sup>1</sup> and need not engage us here. The panic of 1907 was also largely responsible in many states for the general overhauling of the regulatory features of the banking laws. In some of these, the laws were merely assimilated more nearly to the national-bank act, but in others, important modifications in the plan of that act were made in the belief that the safety of deposits would thereby be better secured.

It is the purpose of the present paper to describe those provisions of the existing state banking laws which represent deliberate attempts to improve upon the regulatory features of the national-bank act. The most important of these may be discussed under the following heads: (1) the form of the capital requirement; (2) the restoration of impaired capital; (3) loans to officers and directors; (4) examinations by directors; (5) the power to authorize the incorporation of new banks; (6) the power to direct the discontinuance of unsafe and unauthorized practices.

<sup>1</sup> *Quarterly Journal of Economics*, November, 1909, and February, 1910.

## THE FORM OF THE CAPITAL REQUIREMENT

The requirement that each bank shall have a specified minimum capital is fundamental in the systems of regulation laid down in the national-bank act and in the state banking laws. The capital of the bank is regarded as a buffer interposed between the bank's creditors and losses which the bank may suffer. If there is no capital or if the capital is small, losses may fall directly on the depositor, and the larger the capital stock, other things being equal, the less the likelihood of loss to the depositor.

Under the national-bank act the amount of capital required is graded according to the population of the place in which the bank is located. A very large number of the state banking laws have similar requirements. The grading of the required capital according to population has been due chiefly to the desire to bring about some adjustment between the capital of the bank and the volume of its business. It is assumed that the larger the business of the bank the greater the chance of its suffering large losses and the larger the capital necessary to protect its depositors against loss. It is also assumed that the size of the city in which the bank is located is a rough index of the amount of business done by a bank.

The grading of the amount of capital required according to the population of the place in which the bank is located is evidently a very crude way of securing a proportion between capital and volume of business. The elaboration of the scale is of some service, but there remain differences in the volume of business transacted in places of the same size and more important differences in the amount of competition which different banks must meet. In a few of the state banking laws the requirement as to capital is graded according to some more exact criterion of the amount of business done by the bank. The earliest attempt to apply this principle is found in the Iowa savings-bank law of 1874. The capital of banks incorporated under that act was fixed at \$10,000, but it was provided that such banks might receive deposits only to the amount of ten times their capital<sup>1</sup>. If a bank secured deposits to a larger

<sup>1</sup> Iowa (1874), ch. 60, sec. 7.

amount, it was required to increase its paid-up capital. The efficacy of this provision has been much impaired by two amendments. In 1900 banks were allowed to count their surplus as part of their capital in making up the required capital;<sup>1</sup> and in 1902 the requirement was modified so as to demand a capital and surplus equal only to one-twentieth of the deposits.<sup>2</sup>

A more important experiment in the same direction was made in Kansas from 1897 to 1901. In 1897 the legislature of that state, convinced of the desirability of grading in some way the requirement as to capital, enacted that the total investments of any bank, exclusive of United States bonds, should not exceed four times the capital and surplus actually paid in.<sup>3</sup> The purpose and operation of this clause was thus described by the Kansas bank commissioner:<sup>4</sup>

One provision, which produced the greatest opposition, was the section which limited the total investments of every bank to four times its capital and surplus. The theory upon which the adoption of this section was urged was that a bank's capital should bear some proper proportion to the volume of business transacted by it; and there being no possible way by which the amount of deposits could be restricted, the idea of restricting the investments appeared to be not only possible but wise. It was argued in support of the proposition that it would result in an increase in the capital of small banks, thereby giving greater protection to depositors; that it would not be a difficult matter to procure additional capital when, for each \$1,000 thus invested, the bank could invest \$4,000, and above all, that banks should be content with receiving an income of \$4 for every dollar invested. The operation of this section has resulted in nearly 100 banks increasing either their capital or surplus. Many have carried their entire earnings to surplus, thereby adding to the strength of the bank and the security of depositors.

The law was repealed against the objection of the commissioner in 1901,<sup>5</sup> and in 1908 a scale graded according to population was adopted.<sup>6</sup> In 1909, however, it was enacted that no

<sup>1</sup> Iowa (1900), ch. 67. <sup>2</sup> Iowa (1902), ch. 167. <sup>3</sup> Kans. (1897), ch. 47, sec. 9.

<sup>4</sup> *Report of Kansas Bank Commissioner, 1897-98*, p. viii.

<sup>5</sup> Kans. (1901), ch. 64.

<sup>6</sup> Kans. (1908), ch. 15.

bank might accept deposits in excess of ten times its paid-up capital and surplus.

Within recent years seven other States—California, Nevada, Oklahoma, South Dakota, Texas, Nebraska and Rhode Island—have adopted similar methods of determining the amount of capital required. In California, by the act of 1909, a graded scale, ranging from \$25,000 in cities of 5,000 population or less to \$2,000,000 in cities of over 25,000 population, was replaced by a requirement of \$25,000 for all banks, together with a requirement that the "aggregate of paid-up capital, together with the surplus, of every bank must equal 10 per cent of its deposit liabilities." If the deposits reach this proportion, the bank must either increase its capital or refuse to receive additional deposits.<sup>1</sup> In 1908 the legislature of Oklahoma gave authority to the bank commissioner to fix the proportion between capital and deposits, and in 1909 it was provided that no bank should receive deposits in excess of ten times its paid-up capital and surplus.<sup>2</sup> In South Dakota the proportion of capital and surplus to deposits must be 1 to 15;<sup>3</sup> in Rhode Island, 1 to 10.<sup>4</sup> In Texas a much more complicated arrangement has been introduced. On November 1 of each year the average daily deposits of the preceding year are computed. If the bank has a capital stock of not more than \$10,000 and its deposits are more than five times its capital and surplus, the bank must increase its capital stock 25 per cent within sixty days, or keep its deposits within the prescribed limit. Similar provisions are made for banks of larger capital, but the proportion of deposits to capital and surplus is increased for banks of larger capital until in the case of banks with a capital of \$100,000 or more the proportion allowed is 10 to 1. The Nevada and Nebraska banking laws provide that "loans and investments, exclusive of reserve, banking house, and fixtures," shall not exceed eight times the amount of capital and surplus.

In Kansas, Nebraska, Nevada, Oklahoma, South Dakota,

<sup>1</sup> Calif. (1909), ch. 76, sec. 19.

<sup>2</sup> Okla. (1908), p. 126; (1909), pp. 120, 121.

<sup>3</sup> S. Dak. (1909), ch. 223, art. ii, sec. 1.

<sup>4</sup> R. I. (1908), ch. 1590.

and Texas, the requirement that capital shall be in a certain proportion either to deposits or to loans is coupled with a capital requirement graded according to population. In California it is coupled with a flat minimum requirement. In Rhode Island the board of bank incorporation determines the amount of capital required for the incorporation of a bank.

The adjustment of the amount of capital required according to population serves another purpose, however, besides preserving roughly a proportion between the amount of capital and the amount of business, in that it also acts as a check on excessive competition. A requirement graded entirely or chiefly according to deposits or loans does not accomplish this end. For instance, if the capital required to establish a bank in a city of 3,000 population is \$50,000, there will usually be only one bank in a place of that population, since there is not enough business to make it profitable for two banks to incorporate with that amount of capital. Under the California law of 1909 a bank with commercial and savings departments may be organized in any California town or city, even in San Francisco or Los Angeles, with a capital of \$25,000. Competition is much freer under such a requirement than under a requirement graded according to population. Undoubtedly, the number of banks will be somewhat larger. The supervisors of banks in the different states appear to be in fair agreement that such a multiplication of banks is undesirable from the standpoint of safety and economy. It is likely, therefore, if requirements as to capital based directly on some index of business are introduced widely in the state banking laws, that they will, as in most of the laws now in force, supplement and not supplant the requirements graded according to population.

#### RESTORATION OF IMPAIRED CAPITAL

The period allowed for the restoration of capital under the national-bank act is three months. In a considerable number of the state banking laws which provide for the assessment of stockholders in case of impairment of capital the period is fixed at sixty days and in a few at thirty days. In the more recent laws, however, no period is specified, the supervisors having

power to fix the time, which may vary according to the condition of the bank<sup>1</sup>. Only in Florida and New Mexico is the period allowed as long as under the national-bank act.

#### LOANS TO DIRECTORS

The national-bank act contains no provisions regarding loans to directors, but in the banking laws of about one-half of the states attempts have been made to devise rules which would prevent the making of loans to directors in excess of the amount to which their credit entitles them. The provisions in the state banking laws concerning loans to directors may be resolved into three classes: (a) the requirement that a majority two-thirds, or all of the board of directors shall approve such loans; (b) a limitation on the amount of loans to directors more stringent than that on loans to other persons; and (c) the requirement that loans to directors shall be secured. Two or all three of these are combined in the banking laws of some states, but the requirement that loans to directors shall be formally approved by the board of directors is the one most frequently found. It has been thought that directors would be reluctant to vote for excessive loans to other directors if their vote is to be recorded.

In most of the states the provisions relating to loans to active officers of the bank are identical with those relating to loans to directors, but in some states they are more stringent. In three states—California, Nebraska, and Oklahoma—the active officers of a banking institution may not borrow from it. In Connecticut, banks and trust companies may not “discount any paper made, accepted, or indorsed by any of their executive officers or clerks.” The desirability of forbidding banks to make loans

<sup>1</sup> The comptroller of the currency in his testimony before the National Monetary Commission recently said: “I think a bank that has an impaired capital ought to be made to make it good at once. It is rather a disgraceful condition of affairs now, and has always been since the national-bank act was passed forty-five years ago, to allow a bank to run along with an impaired capital and still continue to take people’s money.”—*Suggested Changes in the Administrative Features of the National Banking Laws*, National Monetary Commission (61st Cong., 2d sess., Senate doc. no. 404), pp. 229–230.



to their active officers has recently been urged by the Wisconsin special committee on banking<sup>1</sup>.

#### EXAMINATIONS BY DIRECTORS

A considerable number of states in recent years have made provision for the examination of state banks at intervals by their directors. The chief purpose in providing for such examinations is to keep the directors informed as to the character of the loans and investments of the bank.<sup>2</sup> It is a matter of complaint by the state supervisors, as well as by the comptroller of the currency, that the greater part of the bank failures result from the neglect by directors of their duties. In his testimony before the National Monetary Commission, Comptroller Murray recently said:<sup>3</sup>

In going over the records of the 500 banks that have failed, it is shown that nearly all of them, except those where there were defalcations and stealing, have failed because the directors have paid no attention to the banks at all, but have just left them drift until they actually became insolvent. The history of the office shows that no bank that has lived within the law, or where the directors have required the executive officers to stay within the law, has ever failed, and I believe one never will fail.

The result of neglect on the part of the directors frequently is that the bank officials or a coterie of interested directors misapply the funds of the bank.<sup>4</sup>

A secondary but important purpose in some of the states in providing for such examinations has been to secure a valuation

<sup>1</sup> *Report of the Wisconsin Special Committee on Banking*, 1910, p. 20.

<sup>2</sup> In order to bring the affairs of the bank under the observation of the directors, provision has been made in Michigan (1909, ch. 193) and New York (1909, ch. 155) that the directors or a committee of the directors at regular monthly meetings shall examine all loans and investments made since the last meeting.

<sup>3</sup> *Suggested Changes in the Administrative Features of the National Banking Laws*, National Monetary Commission (61st Cong., 2d sess., Senate doc. no. 404), p. 280.

<sup>4</sup> In order to insure as far as possible that the directors shall be financially interested in the welfare of the bank, the banking laws in a majority of the states provide that directors must be the bonafide owners of a specified number of shares.

of the bank's assets by the directors. As has been noted above, the central point in the regulation of banking in all the states is the rule requiring the maintenance of a specified capital, and the chief purpose in the examination of banks is to ascertain whether capital has been impaired. The bank examiner, with the advice and guidance of his official superiors, must therefore value the assets of the bank in order to ascertain whether they are of the value at which they are carried on the books of the bank, and in making such a valuation, the sworn valuation of the directors is of great service.

In 1910 the banking laws of 19 states—California, Georgia, Iowa, Kansas, Michigan, Mississippi, Minnesota, Nebraska, Nevada, New Hampshire, New York, New Jersey, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Virginia, and Wisconsin—require the directors or a committee of the directors of a state bank to make an examination of the bank. In Missouri a committee of shareholders, elected as the shareholders decide, must make an examination. In most of the states examinations must be made at least twice a year, but in several states they must be made quarterly, and in others, annually.

In nearly all of the states which provide for the examination of banks by their directors, a report of the examination must be forwarded to the state supervisor; but in some of the states it is required only that the report shall be spread on the minutes of the board for the information of the supervisor or his examiner, and in three states—Virginia, Tennessee, and Nebraska—there are no provisions even for recording the result of the examination.

The character of the report which is to be made is not explicitly defined in some of the states. In Mississippi, Kansas, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, Virginia, and Tennessee it is provided merely that the directors are to make a thorough examination of the affairs of the bank. In Iowa and New Hampshire the report of the examination is made on blanks furnished by the supervisor, and must therefore cover all matters concerning which he desires information. In the remaining states which require such examinations the laws make explicit provision as to the character of the report. The

provision inserted in the New York banking law in 1905, which has been the model for most of the recent legislation of the same kind, requires, for instance, that the report "shall contain a statement in detail of loans, if any, which in the opinion of the directors are worthless or doubtful, together with their reasons for so regarding them, also a statement of loans made on collateral security, giving in each case the amount of the loan, the name and market value of the collateral, if it has any market value, and, if not, a statement of that fact and its actual value as nearly as possible." Similar provisions are found in the banking laws of California, Georgia, Michigan, Minnesota, Missouri, South Dakota, and Wisconsin.

Nearly all the laws providing for the examination of banks by their directors have been passed in recent years, and it appears likely that such examinations will shortly become a customary feature of the state banking laws. The committee on uniform laws of the National Association of State Bank Supervisors recommended in 1908 the enactment of similar laws in other States, and the recommendation was approved by the convention.<sup>1</sup>

#### POWER TO AUTHORIZE THE INCORPORATION OF NEW BANKS

The national-bank act confers authority upon the comptroller to withhold his certificate when it has been ascertained that the association has been organized for purposes other than those contemplated by the act. Also the organization of associations with a capital of less than \$100,000 is subject to the sanction of the secretary of the treasury. Within the past two or three years the comptroller of the currency has been more careful than formerly in the scrutiny to which he subjects proposed incorporations of national banks. In his report for 1909 the Comptroller said: <sup>2</sup>

<sup>1</sup> *Proceedings of the Seventh Annual Convention of the National Association of Supervisors of State Banks*, pp. 21, 36. For an adverse opinion as to the probability of thus securing the interest of directors, see *Suggested Changes in the Administrative Features of the National Banking Laws*, National Monetary Commission, (61st Cong., 2d sess., Senate doc. no. 404), p. 356.

<sup>2</sup> *Report of the Comptroller of the Currency*, 1909, p. 17; see also *Proceedings of the Eighth Annual Convention of the National Association of Supervisors of State Banks*, 1909, p. 109.

To avoid the formation of associations for ulterior purposes or by those lacking the qualifications necessary to the successful conduct of the banking business, or in a place the population and business of which are insufficient to warrant the establishment of a national bank, the comptroller, upon receipt of an application to organize, causes a special investigation to be made, the results of which determine the favorable or unfavorable action.

One of the purposes in many of the states in abandoning the incorporation of banks by special act was to do away with favoritism in the granting of charters. The conditions for incorporation laid down in most of the general banking laws are of such a kind that the act of the state officials in issuing charters is purely formal. In several states, however, power has recently been conferred on the supervisors to exercise more or less discretion in authorizing the incorporation of new banks. In some of these states the powers thus conferred upon the supervisors are apparently broader than those explicitly conferred upon the comptroller of the currency. In North Dakota, Ohio, Michigan, South Dakota, West Virginia and Wisconsin the supervisors have power to refuse authorization if the bank is formed for other than the legitimate business contemplated by the banking law. In Minnesota the supervisor must be satisfied that the bank has been organized not only for legitimate purposes, but also "under such conditions as to merit and have public confidence." In Nebraska the state banking board must satisfy itself, before granting a license, that the incorporators are persons of integrity and responsibility. In Illinois the auditor may withhold the certificate of incorporation, "when he is not satisfied as to the personal character and standing of the officers or directors, or when he has reason to believe that the bank is organizing for any other purpose than that contemplated by this act." In California and New York the supervisors are required to inquire "whether the character and general fitness of the persons named as stockholders are such as to command the confidence of the community in which such bank is proposed to be located." These provisions are intended to give the supervisors power to prevent the formation of banking associations for illegitimate or fraudulent purposes and to

prevent the formation of such associations by irresponsible and inexperienced persons.

In a few states the banking laws give the supervisors still larger discretionary powers with reference to the authorization of new banks. In Rhode Island the board of bank incorporation must give a certificate that "public convenience and advantage will be promoted" by the establishment of any proposed bank before a charter is granted. In New Jersey the Commissioner of banking and insurance approves the certificate of incorporation of a bank, if it appears to him that the establishment of such a bank will be of public service. In South Dakota the public examiner may refuse a certificate if the business of the town or city in which the proposed bank is to be located does not warrant the incorporation of another bank. In Oklahoma the bank commissioner has refused to issue certificates of incorporation for banks when he considered the business of the town in which the proposed bank was to be located insufficient to support an additional bank<sup>1</sup>. In New York the superintendent of banks has had power since 1908 to refuse a certificate of incorporation to a bank if in his opinion the public convenience and advantage would not be promoted by its establishment.

Considerable difference of opinion appears to exist as to the desirability of conferring power to refuse authorization for the establishment of new banks in cities or towns where the supervisor regards the banking facilities as already ample. The New York special commission on banks in 1907 favored strongly the conferring of such powers on the superintendent of banks. They said:

It has sometimes happened that banking institutions have been organized for no better purpose than to give employment to the parties bringing about the organization, without regard to the need of the locality. Because of the very high price that the stock of successful banks has commanded, institutions have been organized by promoters whose apparent ultimate object was to realize a profit by selling the same after organization was completed.

<sup>1</sup> *Proceedings of the Eighth Annual Convention of the National Association of Supervisors of State Banks*, 1909, pp. 85, 89.



At the seventh annual session of the National Association of the Supervisors of State Banks in 1908, the committee on uniform laws recommended that supervisors should be given authority to decide whether the proposed incorporators of a bank are proper persons to conduct a banking business, and also whether "any need of such a bank exists in the locality in which it is proposed to establish it." The recommendation was eliminated from the report as adopted, apparently because many of the supervisors were opposed to vesting in the supervisors any power to determine the need of a community for additional banking facilities.<sup>1</sup> On the other hand, the supervisors in several of the states have recently urged that they be given such powers.<sup>2</sup> In his report for 1909, the secretary of the state banking board of Nebraska said:

There is one feature of the present situation in this state to which I desire to call your attention and for which there seems at present no adequate remedy, and this is the establishment of banks where banking often results in two or three, or more, weak or poorly-paying banks where fewer would be stronger and safer and meet all the requirements. Your honorable board should have the same privilege as the comptroller of the currency in the supervision of national banks. You should have a legal right, when application is made for a charter for a bank, to decide on the qualifications, the financial ability, the past record of the proposed management, and to determine whether or not the community where the proposed bank is to be established justifies the venture. Repeated instances coming to this department clearly indicate the necessity of some step in this direction.

POWER TO DIRECT THE DISCONTINUANCE OF UNSAFE AND  
UNAUTHORIZED PRACTISES

The national-bank act confers upon the comptroller of the currency power to appoint a receiver for an insolvent bank, for a bank which does not restore an impaired capital within three months, or for a bank which fails to keep the reserve required

<sup>1</sup> *Proceedings of the Seventh Annual Convention of the National Association of Supervisors of State Banks*, 1908, pp. 18, 34.

<sup>2</sup> *Fourth Annual Report of the Bank Commissioner of Idaho*, p. 5; *Report of Public Examiner of Minnesota*, 1907-8, p. viii.



by the act. For violation of certain specific provisions in the act with reference to the conduct of business, *e. g.*, the making of an excessive loan, the comptroller may cause to be instituted a suit for depriving the bank of its franchise. The comptroller has no power, however, to put an end to practises not explicitly forbidden in the national-bank act. He may remonstrate and warn the bank, but he cannot enforce his warnings.

Within the past few years there has been a growing tendency to give the state bank supervisors power of a much more indefinite and discretionary character. Authority to "direct the discontinuance of unsafe and unauthorized practises" or similar powers have, in 1910, been conferred on the supervisors in Arizona, California, Iowa, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Washington, and Wisconsin. The provision in the California law of 1909 is typical of the provisions in those states in which the largest powers in this respect have been conferred upon the supervisors. It reads as follows:

If it shall appear to the superintendent of banks that such bank is conducting business in an unsafe and injurious manner, he must . . . direct the discontinuance of such unsafe and injurious practises. Such order shall require such bank to show cause, before the superintendent of banks at a time and place to be fixed by him, why said order should not be observed. If upon such hearing it shall appear to the superintendent of banks that such bank is conducting business in an unsafe or injurious manner, or is violating its articles of incorporation or any law of this State, then the superintendent shall make such order of discontinuance final, and such bank shall immediately discontinue all practises named in such order by the superintendent of banks.

There appears to be general agreement among the state supervisors that such an extension of authority is desirable. The grounds for this view have been set forth clearly in recent official and semi-official reports. In his report for 1907 the New York superintendent of banks said:

Among the causes contributing to the suspension of the closed institutions was a lack of supervisory power in the superintendent of banks. In some cases the department has called attention to practises which

were considered to be unsafe, but without avail. We believe that if the superintendent of banks had had the authority to enforce a discontinuance of such practises several of the state institutions now closed would not have found it necessary to suspend . . . It is true that he (the superintendent) may address his communications of criticism to offending corporations, but this method of correction is the practical limit to which he may go until conditions have reached such a point as to require his taking possession of the bank or trust company when it shall appear to the superintendent that it is unsafe and inexpedient for such corporations to continue business.

The laws conferring upon the supervisors authority to direct the discontinuance of unsafe practises have been enacted in most of the states so recently that it is not possible to obtain any comprehensive view as to how that power will be used. The following statement issued by the California superintendent of banks late in 1909 probably indicates in a general way the character of the "unsafe practises" which are being repressed by the supervisors:

The framers of the act of 1909 wisely recognized the absolute necessity for centralization of administrative power in one man, a superintendent of banks, and conferred upon the superintendent ample authority for the enforcement of necessary regulations. It is useless to prescribe remedial measures without at the same time conferring ample authority for their proper enforcement. The most striking illustration of this is the power conferred upon the superintendent to direct the discontinuance of harmful and injurious practises. By virtue of the same he has, among other things, directed the discontinuance of the practise of creating indebtedness on overdrafts, an old and vicious custom prevalent in many sections of the state; directed the holding of monthly meetings of boards of directors and their proper assumption of responsibility in the management of the bank's affairs, his position in this matter being greatly strengthened by similar directions of the comptroller of the currency, the bonding of officials responsible for the handling of funds, the insurance of bank premises, etc.

## THE RELATION OF STATE TO NATIONAL BANKS<sup>1</sup>

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ANY plan for monetary reform which is to be successful must comprehend within its scope all the banks of the United States. They "must all hang together" or they will suspend separately. This unity can be maintained only through the hegemony of national banks under a national law. The recent history of state bank growth and the events of 1907 show that this leadership is not increasing as it should.

A survey of existing banking laws and practises in the several states and territories makes clear the nature of the rivalry of state banks and the reasons for their lusty growth. Shall the national system be enlarged to include the multitude of state banks? The terms upon which this can be done, if it can be at all, are determined absolutely by the facts of the present situation. Aside from the solution of this question the only end to be gained from a survey of state and territorial banking will be to discover expedients which would be useful if incorporated into the national banking laws.

An examination of the facts which Mr. Welldon and Dr. Barnett have placed before us shows that the important banking of our country is being done largely by three forms of incorporated institutions—national and state banks and trust companies. We confine ourselves therefore to the consideration of these three types. No distinction is made between savings and state banks in twenty-six states and territories.

The three types show different rates of growth. The differences are especially marked in the period from 1899 to 1909, when both state banks and trust companies increased in num-

<sup>1</sup>Based on *Digest of State Banking Laws*, by Samuel A. Welldon, and *State Banks and Trust Companies*, by George A. Barnett. Washington, Government Printing Office. Publications of the National Monetary Commission. (Senate docs. nos. 353 and 659, 61st Cong., 2d sess.)

bers, capital, and deposits far more rapidly than did national banks. The relative importance of the "nationals," in the total of the three, declined from 1882 to 1909 as follows: From 68.8 % to 35.7 % in numbers; 80.3 % to 54.5 % in capital; and 71.5 % to 47.1 % in deposits. The most formidable competitor bringing about this decline was the trust company. While state banks form over one-half the present banking institutions, the trust companies possess a large volume of capital, and that in the chief commercial centers.<sup>1</sup>

The trust company presents the most interesting development. It has given up the insuring of personal fidelity and land titles, and has extended its banking activities until at the present time it is generally viewed as a bank exercising additional functions, chief of which are trusts. This fact accounts for the recent tendency to legislate with regard to the different kinds of business rather than for banks of different names, such as state or savings banks or trust companies. In spite of this rapid expansion of the banking business of trust companies, it is quite clear that the greatest opportunities for trust-company usefulness and growth lie in the direction of trusteeships.

## I

Shall the national banking system be enlarged to include the state banks and trust companies? The effective reason for the organization of banks under the general acts of the several states and territories is the greater advantage for profit-making under those laws. An extension of the national system by the voluntary conversion of other banks can come only by the offer of equal or greater advantage for profit.

The prevailing requirements for state banks may be sketched in their main outlines. The minimum capital required for state banks varies from nothing to \$50,000 in the different states.<sup>2</sup> In the south and west the requirement is less

<sup>1</sup> New York city, deposits in 1910: trust companies, \$1,245,000,000; clearing-house banks, \$1,280,000,000.—*Trust Companies*, October, 1910, p. 246.

<sup>2</sup> A specific minimum capital is not required in Arizona, Arkansas, South Carolina and Tennessee. \$5,000 is required in North Carolina. Elsewhere the minimum is \$10,000 or more.

than the \$25,000 required for national banks. Some twenty states require but \$10,000 or less. In twenty-nine of the thirty-seven states and territories which require a minimum under a general law, the amount is graded according to population. In most of these states \$25,000 is the maximum, though several require \$100,000. As compared with the national-bank minimum of \$25,000 for towns of less than 3,000 population, three states have higher, seven states have the same, and seventeen have lower requirements. As compared with the national-bank requirement of \$50,000 for places of 3,000 to 25,000 population, over three-fourths of the states which prescribe a fixed capital have lower requirements. None of the states require more; in several they require much less. For cities of 25,000 to 150,000 three-fourths of all the states have lower requirements than the national-bank requirement of \$100,000.

This difference in the amount of capital required is one of the noteworthy contrasts between national and state legislation, and this difference exists not only in legislation. 52 % of the 11,319 state banks in operation on April 28, 1909, had less than \$25,000 capital, and 27 % had capital ranging between \$10,000 and \$15,000. A few states show some lack of banking ideals in permitting an authorized capital larger than the paid-in requirements, undue prolongation of the paying in of capital, and the payment of subscriptions to capital in things other than "cash" or "money of the United States".

The national-bank act requires one-tenth of net earnings to be set aside annually toward a surplus fund until it amounts to one-fifth of the capital. Nineteen states have this rule; seven states have more stringent provisions; Virginia has a lower requirement; and seventeen states do not require, by general law, such a surplus accumulation. In addition to this surplus fund added to capital, most states follow the national-bank act in providing for the double liability of shareholders. In nineteen states the shareholders are responsible "equally and ratably and not for one another". In fourteen states the shareholders are liable "jointly and for each other". Sixteen other states are more lenient, imposing no statutory liability whatever.

Where this liability was in force it did not prove efficient for the end desired. The courts held that the shareholder was bound to the creditors and not to the bank itself. Recent legislation is correcting this, however, by making the liability collectible by the receiver. The fact that it is a secondary and not a primary liability frequently delays liquidation and increases expense.

The most important method of protecting the depositor is by the regulation of loans. Provisions are in force determining what are excessive loans, restricting loans to directors and officers, and limiting loans upon bank stock or real estate. In order to insure a proper distribution of the risks of each bank, excessive loans need to be defined and prohibited in the United States, where small independent banks and large industrial establishments exist side by side. The national-bank act limits the amount of any single liability due a national bank to one-tenth of its capital and surplus and to 30 % of its capital stock. With the exception of two states, the state banking laws are far more liberal. Some twenty-two states allow from 15 % to 30 % of capital and surplus as the limit to each individual liability to a bank; and ten states have no limitations whatever.

The national bank act permits an excess if it consists of advances on *bona fide* bills of exchange and commercial paper actually owned by the negotiator. The state laws, in addition to these, make exceptions in favor of loans on real-estate mortgages (six states); loans on bills of lading and warehouse receipts (eight states); loans on collateral security (fifteen states); and loans approved by a vote of the directors (four states). This greater liberality may be accounted for by the smaller size of most of the state banks and the difficulty of enforcing restrictions. Even in the national system enforcement is not easily accomplished; for as late as September, 1909, over one thousand banks (or 15 % of the total) voluntarily reported excessive loans. Several of the eastern states have recently set limitations as to the amount of any one loan irrespective of the individual's liability.

Another important contrast between national and state banks is the power conferred upon the latter and denied the former



to loan upon real estate. The national banks are well suited to a city community where collateral, commercial paper and like securities, are relatively abundant, widely held, and rapidly turned over in taking profits. The state banks, on the other hand, are able to fill the needs of agricultural communities where real property is the chief asset of individuals and where the turnover by the nature of the crops is an annual one. This probably accounts for the numerical abundance of state banks in the west and south.

A few states limit the amount to be put into real-estate loans to a percentage of the capital, or assets, or total loans. The prevailing practice is to limit these loans to 50 % of the capital, or capital and surplus. A few place the limit at from 15 % to 40 % of the assets; and some at 20 % of the loans. State laws define the character of these loans as to the location of the property, the character of the lien, or the proportion which the value of the real estate must bear to the amount of the loan. Holdings of real estate are limited to a five-year duration following a foreclosure sale.

These real-estate loans are a larger proportion of the total loans in the smaller towns and cities. And "notwithstanding the disadvantages of real estate as a convertible asset, the power to loan on the security of real estate is a valuable one to many of the state banks." On April 28, 1909, 20.6 % of the total loans and discounts of state banks were based upon security of this character. In so far as the deposits of state banks are time deposits this form of lending cannot be troublesome, though it is not suitable for active commercial banks in large centers of population.

The third great difference between national and state banks is found in the reserve requirements. Here also the state and territorial laws are the more lenient. At present (1910) in ten states<sup>1</sup> no reserve whatever is required for incorporated banks. In fourteen states<sup>2</sup> a reserve is required only against demand

<sup>1</sup> Arkansas, Indiana, Illinois, Mississippi, New Hampshire, New Mexico, South Carolina, Tennessee, Virginia, Wyoming.

<sup>2</sup> Alabama, Connecticut, Delaware, Georgia, Louisiana, Maryland, Minnesota, Missouri, New Jersey, New York, Idaho, Rhode Island, Washington, West Virginia.

deposits. The amount ranges from 10 % to 25 %, although 15 % is commonly required. In six other states<sup>1</sup> a lower reserve is required against time deposits than against demand deposits. This ranges from 4 % to 15 % for time deposits as against 15 % to 25 % for demand deposits. In sharp contrast, the national-bank act requires from 15 % to 25 % of all deposits. This example has been followed in but thirteen states.

Not only in regard to the amount of reserve, but also as to its form, do state and national laws differ. The national banks are allowed to redeposit of their reserves as follows: Country banks, three fifths; reserve-city banks, one half; and central-reserve-city banks, nothing. All states permit balances in other banks to be counted as a part of the reserve. The amount of re-deposit so authorized varies from one-half to three-fourths. A few states distinguish between the amount to be re-deposited of the reserve against demand and time deposits. As high as eleven-fifteenths of the latter are so re-deposited.

In seven states "the banks determine for themselves what part of their reserves shall be cash in bank and what part shall be in the form of bank balances". In four states, bonds may be counted in the reserve<sup>2</sup>. In the choice of depositories the state banks are practically unrestricted. In but five states are distinctions made between the reserves required of ordinary banks and of reserve agents.

The prohibition of branches except to state banks having them previous to conversion is a characteristic feature of the national system. General acts authorize branches in nine states<sup>3</sup> and special acts have created them in two states<sup>4</sup>. Where authorized they are compelled to provide a separate capital for each branch and to obtain the consent of state officials for its establishment. In some of the states which do not permit the

<sup>1</sup> California, 4 %; Pennsylvania,  $7\frac{1}{2}$  %; Kentucky, Oregon, Utah, 10 %; Texas, 15 %.

<sup>2</sup> The part of reserve that may be so held:  $\frac{3}{4}$ , Georgia;  $\frac{1}{2}$ , Connecticut;  $\frac{3}{4}$ , Florida;  $\frac{1}{2}$ , Pennsylvania.

<sup>3</sup> California, Delaware, Florida, Georgia, New York, Oregon, Rhode Island, Virginia, Washington. Also permissible in South Carolina.

<sup>4</sup> Maryland and North Carolina.

organization of branches, systems of allied banks have been built up either by direct stock ownership of one by another or by a community of interest among the shareholders of the different banks.

Effective legislation is aimed at the prohibition or restriction of the former method in sixteen states; while the latter method is almost beyond reach of the law. However, the number of branches in the United States does not exceed a few hundred, and many of the so-called "chains" do not possess much banking power. The great mass are independent banks.

The trust companies present some different features from the state banks. While it is true that the laws concerning state banks and trust companies are tending to become assimilated, certain important differences remain.

The trust companies are distinctly authorized to accept trusts and to do a safe-deposit business in addition to general banking. The majority of the states which provide for a specified capital require a minimum of \$100,000 or over.<sup>1</sup> There is a tendency in recent legislation to lower this amount. "In every state except one the smallest permissible capital is as large for trust companies as for state banks, if not larger; in six states it is the same; in all the others it is larger."

Subscribed but unpaid capitals are permitted in fourteen states, but the majority require full payment. Of the latter over half require full payment as a condition for beginning business. The payment is required by all but nineteen states to be "in cash" or "in lawful money." The accumulation of a surplus is not required in so many states for trust companies as for banks.

With respect to loans, trust companies are less restricted than state banks. Nine states<sup>2</sup> which limit state banks do not limit trust companies.

<sup>1</sup> Seven states require over \$100,000; thirteen require \$100,000; three require \$50,000; nine require \$25,000; and but five require less than \$25,000. These latter are Iowa, North Carolina, Nevada, Virginia and Wyoming; they contain but fifteen trust companies.

<sup>2</sup> Kansas, Michigan, Minnesota, Missouri, Montana, Oklahoma, New Jersey, Nebraska and Wisconsin.

The reserve requirements for trust companies are much less than for state banks. Six states and territories require no reserve whatever.<sup>1</sup> Two states<sup>2</sup> require reserves of trust companies but not of banks. In the remaining states, trust companies are favored by being allowed to count bonds as a part of the reserve; or to hold lower reserves against time deposits. Recent legislation shows a tendency to increase these reserves or to diminish the proportion of bonds held in them. This leniency has probably been due to the different character of trust-company deposits. They are largely inactive<sup>3</sup> and contain but a small percentage of bank deposits<sup>4</sup> which are subject to sudden or large withdrawals.

From the foregoing survey the offer that must be made to induce a voluntary conversion of state banks and trust companies is quite clear. The following changes in national-bank privileges must be authorized to compete with the state commercial banks: a capital of \$10,000 or more; loans upon real estate to some percentage of capital, assets, loans, or time deposits; and to compete with trust companies: the acceptance of trusts, a capital of \$25,000 and up, probably determined according to population; real-estate loans to a large percentage of time deposits; and a small percentage of quickly convertible assets such as bonds for a secondary reserve reinforcing a primary reserve of a relatively small amount.

With profit-taking advantages thus equalized in the two systems, the superior credit which comes from national organization and other incidental advantages would probably bring conversion. The superior quality of national examination, supervision, uniformity and affiliation would insure greater safety, fewer failures and better facilities than under the methods in

<sup>1</sup> Colorado, Iowa, Minnesota, Utah, Vermont, District of Columbia. The first four require reserves of state banks.

<sup>2</sup> Wyoming and New Mexico.

<sup>3</sup> Clearings relative to deposits in Boston: Trust companies, 4 %; national banks, 10 %. Clearings in New York: trust companies to nationals, in ratio 7: 100.

<sup>4</sup> The percentage of deposits due to other banks: Boston (Dec. 3, 1907) trust companies, 2.3 %; national banks, 32.6 %. New York (1907) trust companies, 12 %; national banks, 45 %.—Barnett. Chicago (1910) trust companies, 9.95 %; national banks, 50.7 %.—Babcock, Rushton & Co., Chicago, compilation.

vogue. Lowering of the national ideal is not advocated; but the recognition of different kinds of business and different local conditions is reason enough to suggest an elaboration of the types of banks nationally organized and nationally controlled.

Not the least advantage to be derived from this spontaneous conversion to the national system would be the power thus accruing to prescribe requirements looking toward a national organization of our credit fabric; and a weaving of its parts with substantial, numerous and far-reaching threads. This conversion to the national system need not take the form of re-incorporation. To provide for the organization by national banks of separate departments having these characteristics, would bring about a considerable transfer of the business of state to national banks.

## II

What expedients have the states discovered which will be useful if incorporated in the national banking laws? In the development of state banking, the national-bank act has been in many respects a standard to which the states have turned for suggestion. However, experience and invention have brought variations that are worthy of consideration, all aimed to give greater security to depositors. The immediate interest of the depositor has been cared for by laws governing reserves; and his ultimate welfare has been protected by laws fixing capital, surplus, and shareholders' liability.

The majority of states have found that a smaller reserve is needed against time deposits than against demand deposits. For a more scientific system, national banks should hold larger reserves against demand deposits and smaller reserves against time deposits than at present. This would induce bankers to urge the use of time deposits for "dead" accounts. The field of active accounts would then be narrowed and better management would result.

Some states<sup>1</sup> recognize in law the practice of good bankers in maintaining a secondary reserve of convertible assets such as

<sup>1</sup> Connecticut, Florida, Georgia, Kansas, Ohio, Oklahoma, Pennsylvania.

bonds. No one advocates the holding of bonds in the primary reserve; but if some percentage of the demand deposits of country banks were required to be held in assets (such as securities, or commercial paper) approved by their reserve agents and discountable with reserve agents at will (in exchange for bank notes, deposit credit, or legal tender money) it would in times of ordinary local disturbances be of great value; and in times of panic, with a proper organization of national credit, it would be indispensable.

For the ultimate redemption of its obligations the stockholders of a state bank are ordinarily required to establish a guaranty fund consisting of "capital" originally invested, a "surplus" appropriated from profits, and a promise to pay more if needed, called "double liability of shareholders." The amount of capital required is rated usually according to the population of the place where the bank is located. To this has been added an improvement in the form of a required ratio between the volume of business and this guaranty fund.<sup>1</sup> The adoption of some reasonable ratio<sup>2</sup> would equalize the risks of depositors in different banks in so far as legislation can do so without altering the human nature of those who lend bank funds.

While the national bank act requires but 50% of the capital to be paid in before opening, and the balance within five months, the states have shown a tendency, especially in recent legislation, to shorten this period. In fourteen states the entire capital must be paid in before opening.<sup>3</sup> Likewise, a large number

<sup>1</sup> *State banks*—Ratio of deposits to capital and surplus: 20: 1, Iowa (savings); 15: 1, South Dakota; 10: 1, Kansas, California, Oklahoma, Rhode Island. Ratio of deposits to capital: 10: 1, Texas (for banks of \$100,000 or over); 5: 1, Texas (banks of \$10,000 capital). Ratio of loans to capital and surplus: 2: 1, Massachusetts (obsolete law); 8: 1, Nevada and Nebraska. *Trust companies*—Ratio of deposits to capital and surplus: 10: 1, Rhode Island, Maryland, Illinois. Ratio of loans to capital and surplus: 10: 1, Illinois, Maryland, South Dakota; 8: 1, Nevada.

<sup>2</sup> June 30, 1910: Chicago banks; actual ratio deposits to capital (without surplus): national banks, 2: 1 - 20½: 1; average, 10.84: 1; state banks and trust companies, 2: 1 - 28: 1; average, 10.67: 1.—Babcock, Rushton & Company, compilation.

<sup>3</sup> Illinois, Iowa, Kansas, Minnesota, Montana, Nebraska, New Jersey, New York, Oklahoma, South Dakota, Rhode Island, Texas, Vermont, Wisconsin.



of states have shorter allowances of time for the restoration of impaired capital. The national banks are granted three months, whereas most of the states allow but thirty to sixty days of delinquency.

"The imposition of the statutory liability on the stockholders of state banks and trust companies has not proved of great service as a protection to bank creditors against loss." The difficulty experienced in endeavoring to prevent or prove the transfer of stock with the intention of evading liability is almost insurmountable. This weakness has been overcome to some extent by extending the period of liability beyond the time of transfer. This extension varies from six months to two years in the several states.<sup>1</sup>

Another advance will be made when national and other banks are denied their present power<sup>2</sup> of loaning on the security of other bank stocks. At least these restrictions should be applied to all stock carrying double liability. This prohibition would give more value to the liability of shareholders and effectively prevent the formation of "chains" of banks except by the strongest of financial interests.

Finding "statutory liability" insufficient, many states have required banks to set aside a surplus fund from net profits. The national-bank act requires 10% annually until the aggregate is equivalent to 20% of the capital. Recent state legislation has improved upon this by requiring a more rapid rate of accumulation and a larger fund.<sup>3</sup> A surplus invested in the general assets is ordinarily superior to a right of legal action.

The vital part determining the safety of any banking system is the management of the loans. Loans given to directors and officers are not in any way proscribed by the national-bank act.<sup>4</sup> About one-half of the states have provisions aiming to guard against evils in such lending. Either two-thirds of the directors

<sup>1</sup> Six months: Wisconsin and Montana. One year: Minnesota, New Mexico, North Dakota, Texas, South Dakota. Two years: Kentucky.

<sup>2</sup> See *National Bank v. Case*, 96 U. S., 628.

<sup>3</sup> 20% of net earnings in California, Indiana, Minnesota, Nebraska, and 10% of net earnings in Kansas, Oklahoma and Texas; until surplus equals 50% of capital.

<sup>4</sup> *Pratt's Digest*, 1908, p. 19.

must approve, or security must be deposited, or the amount must be less than that allowed other kinds of borrowers. Loans on the bank's own stock are forbidden in thirty states and territories; and purchases of the same are forbidden in thirty-five states and territories. National banks may hold their own stock as security for loans "previously contracted in good faith".<sup>1</sup> This is true of all state banks.

Provision for the publishing of unclaimed deposits in national banks would not be improper. Nineteen states now have such requirements. If finally unclaimed they should escheat to the state.

As a remedy for losses transcending the guaranty fund of capital, surplus, and shareholders' liability, five states<sup>2</sup> have authorized "a depositors' guaranty system". Since it is of comparatively recent origin and not widespread in application it does not recommend itself for adoption.

<sup>1</sup> Revised Statutes, U. S., Sec. 5201.

<sup>2</sup> Voluntary in Kansas and South Dakota; compulsory in Nebraska, Oklahoma and Texas.

## THE NEED OF AN EXPANSION JOINT IN OUR MONETARY SYSTEM<sup>1</sup>

ROBERT D. KENT

President of the Merchants' National Bank of Passaic, N. J.

THE expansion joint is a well-known device in mechanics. If you should walk over the Brooklyn bridge you would see a place where steel plates slide over each other in the roadway, and if you should ask the purpose they serve you will be informed that it is an "expansion joint," to allow for the effect of heat and cold in expanding and contracting the metal of which the bridge is built. Your watch has in it a device known as the "balance wheel" which is an expansion joint to enable it to do its work correctly, regardless of the expansion by heat or the contraction by cold. Note that while the name is "expansion joint" the thing really is an expansion and contraction joint. We experience numerous ill effects because we have no expansion joint in connection with our currency or because our currency lacks elasticity.

Last year the value of our principal crops amounted to 4,652 million dollars. Practically all of this is harvested and marketed in the fall; hence we require great amounts of money to "move the crops." We hear that term very frequently but I do not think many of us realize what is implied by it. Several years ago I was in Nebraska, and with some other men was starting to drive out into the country from a town on the railroad. One of our party who lived in the town called our attention to a man driving into the place with several hogs in his wagon. He said, "That man will sell his hogs and get twenty-five or thirty dollars for them, and will spend five or six dollars for groceries and supplies, and take the balance of the money back into the country to his home ten or fifteen miles from the railroad. The next week he will repeat the operation. The money he takes

<sup>1</sup> An address before the Passaic Board of Trade.

back with him each week will go to make up a fund which will last him for his family expenses until the following spring." I then woke up to the fact that several million farmers were doing the same thing all over our broad land, and I had a larger conception of what it meant to furnish money to move the crops—the cereal and other products of the west and the cotton of the south.

We can have no accurate statement of the amount of money needed each fall to move the crops, nor just how long it will be before it gets back again to the money centers; but a fair estimate would be that 200 or 300 million dollars is required each fall for this purpose and that in January, February and March nearly all of the crop-moving money will be restored to ordinary circulation. Where is the large amount of money needed each year obtained, and at what cost? The banks at the money centers carry little cash above their legal reserve. They call in demand loans to the disturbance of the security market. They refuse much-needed accommodation to merchants and manufacturers to whom they would willingly lend at other seasons of the year. They also collect all the maturing time paper which they have purchased from commercial-paper dealers from April to July. Financial strain is caused on every hand. If by such efforts in our own country money enough is not obtained, we also disturb the money centers of Europe.

So much for the inability of our currency to expand when funds are urgently needed; now a few words on the results of its inability to contract when money is unduly abundant. In the spring and early summer of 1909 when the crop-moving money had all been returned to the money centers, there was a considerable time when call money was plentiful at from  $1\frac{1}{2}$  to 2 per cent. In the early spring a member of a stock exchange house in New York remarked to me, "In two or three weeks the banks will be crazy with money"—his idea being that almost any rate would get it, and that the banks would not be severely critical as to the character of the collateral required. For a period of two or three months a little later than this, the dealers in commercial paper were going about among the business houses of New York, and probably elsewhere, offering

amounts of from \$25,000 to \$100,000 or more on single-name paper at  $3\frac{1}{2}$  per cent. It needs but little imagination to see how this condition leads to undue inflation of security prices, to the flotation of unwise ventures, and to the undue use of credit by the commercial and manufacturing community.

It is not entirely correct to say that we have no expansion joint in our currency system. Clearing-house certificates serve the purpose to a limited extent, but we never use them until the case is so desperate that a panic is upon us. Even when issued they fall short of serving us to the best advantage, because they do not go from city to city, and because they are not issued in small denominations for wages and small transactions, except as they were so used in a few cities in 1907 in direct violation of law. The present emergency currency law is an attempt to furnish us with elasticity, but it is not adapted to our comparatively moderate extra needs each fall. It is more for the purpose of helping us to recover after we have been seriously hurt. A few changes in the law would, I feel sure, make it extremely useful.

One very serious result of our present system is, that on the approach of bad times every wisely-managed bank begins to accumulate cash by contracting its loans in order to be prepared for anticipated stringency. Thus when the business community is in special need of accommodation the banks lend less than usual. As a result conditions are made worse. The banks are not to be blamed for such action. Indeed it is necessary for the protection of themselves and their depositors, as they have no central banking system to which they can apply later on for relief when help may be urgently needed. When undue contraction results from previous expansion, merchants with falling sales have to sacrifice stocks to realize funds to meet obligations, and the weaker ones frequently fail. Manufacturers curtail production and discharge hands. These employees, unless thrifty and possessed of means to tide them over, are reduced to poverty. Their purchasing power is cut off or diminished, and in consequence retail merchants find their business seriously lessened. Many men who have made small payments on the purchase of a house are forced through failure in business or

loss of employment to relinquish their investments, and lose what they have put in. All classes of society suffer.

A plan might be put into effect which, while it does not cover all the ground, would do much to check the evils of our over-supply of money at one season of the year, and our shortage at the other. Until we have a central bank or some other system to answer the same purpose, it would greatly help the situation, and indeed would be beneficial even after a more comprehensive plan was put into operation. This plan is so simple that it could be put into effect by four or five gentlemen in New York at a fifteen-minute conference; and yet I am confident that it would be greatly helpful.

The plan is that not less than four or five of the leading New York banks unite to discourage the accumulation of money in New York from about March to September, by lowering the rate of interest they will pay on the balances of out-of-town banks, to the extent of one-half of one per cent or more if necessary, and that from September to February they encourage the shipment of money to New York by raising the rate correspondingly. If four or five of the larger banks in New York should adopt the policy of changing the interest rate as suggested, the others would be forced to follow their example. This in turn would compel the banks of Chicago and St. Louis, the other central-reserve cities, to take similar action. The banks in the ordinary reserve cities—Philadelphia, Boston, Albany, Pittsburg, Cincinnati, and the rest—would feel the force of the action, and would be compelled to govern their action accordingly.

The average rate for call money during November 1905 was  $8\frac{3}{4}$  per cent, and during December it was  $21\frac{1}{2}$  per cent; in November 1906 it was  $10\frac{1}{4}$  per cent, and in December  $15\frac{1}{4}$  per cent; in October 1907 it was  $20\frac{1}{2}$  per cent, in November 16 per cent and in December over 12 per cent. As a contrast to these conditions, there was a period of six months or more in the spring and summer of 1908 when the average rate was about  $1\frac{1}{2}$  per cent and for six months in 1909 when it was about two per cent. Under these widely-varying conditions in the money market the New York banks make practically no change in the



rate of interest which they pay on bank balances. Not having lowered the rate when money was a drug in the market, they are not in a position to raise the rate in order to attract funds when they are greatly needed. How different is this condition from that in France, where the Bank of France, by the simple expedient of varying its rates slightly, has conferred incalculable benefit upon French trade in all its forms.

I believe that the policy I advocate would pay each individual bank in New York better than the present method, and the interest received by the out-of-town banks would average about the same as at present; but even if there should be some slight loss in either direction, it would be compensated many times over by the advantage of doing business on a more stable basis. It is sometimes said that strong financial interests desire the continuance of the present system in order that they may make large profits out of the violent changes in the money market. Of this I have no proof, but I will say that if strong financial operators desire to do business on such a basis, the present currency laws and the practise of the New York banks aid them greatly in accomplishing their purpose.

A few years ago we heard much on the subject of New York becoming the money center of the world. She cannot look forward to that distinction until our currency laws are perfected, and until her banks are prepared to do business on broad lines in harmony with the laws of supply and demand, thus doing their share in steadying the money market of the world. It is imperative for the best results in business that legislation be enacted to eliminate the evils incident to our present rigid supply of currency and credit. Business men who realize the hazard of commercial operations as now conducted should urge the remedy—a central bank under strict governmental control. Meanwhile such an interest-regulating coalition as I have suggested would provide immediate relief and would likewise constitute a valuable permanent feature of our machinery of monetary regulation.

## A UNITED RESERVE BANK OF THE UNITED STATES<sup>1</sup>

PAUL M. WARBURG

THE summary of a recent investigation undertaken by the *Banking Law Journal* discloses the fact that out of 5613 answers given by national and state bankers to the question: "Do you favor a central bank if not controlled by 'Wall Street' or any monopolistic interest?" 59½ per cent were affirmative, 7 per cent were undecided, and 33½ per cent were negative. Almost all the negative answers, as far as published, are based upon the argument that a central bank, if established, could not permanently be kept out of political or "Wall Street" control. Between the opponents and the champions of a central bank plan there is complete unanimity of opinion that such a system should be tried in our country only if the dangers of "Wall Street" or political control can be absolutely averted.

The main question at issue is this: Is it possible to evolve a plan which, while containing these elements of safety, will at the same time be completely practicable?

It is our belief that no progress can be made by meeting the sweeping assertions of those opposed to a central-bank plan by equally sweeping replies, but that advance is possible only by outlining a tangible plan for such a bank. This, on the one hand, will give to those not yet familiar with the actual working of such an institution an opportunity for study, and on the other hand it will force the critics of such a plan, it is hoped, to offer specific and well-defined objections which may lead to some definite results.

It should be stated at the outset that the plan here submitted does not suggest a central bank such as exists in various European countries. It is a scheme based upon conditions peculiar to our country and our form of government. It recognizes the vast territorial area of the United States, the diversity and dissimilarity of interests, and even the traditional, sectional and

<sup>1</sup> A paper first presented on March 23, 1910, before the Finance Forum of the Young Men's Christian Association of New York.

partisan prejudices of the people. In consequence of this, many features which are contained in European plans and which figured, to some extent, in the operations of the first and second banks of the United States have been omitted, while certain features foreign to European organizations have been incorporated. All the underlying principles of safe and intelligent modern banking, however,—principles which must be adopted if we are to obtain a banking system adequate to our present and prospective needs—have been observed and are embraced in the plan. This essay, while advocating the central-bank idea, submits a much modified system, which we should like to designate the "United Reserve Bank of the United States". The plan does not pretend to be final or complete in all its details; its purpose is to indicate the fundamental principles upon which the solution of the problem depends and to point out one method of solution.

The strongest arguments made against the plan of a central bank in the United States are those advocated by Mr. Victor Morawetz and by Professor O. M. W. Sprague. We have made free to answer these two critics in the second and third parts of this essay, and in endeavoring to refute their arguments have attempted at the same time to meet the principal objections of other critics whose writings have come to our notice.

## I

Let us assume that a United Reserve Bank of the United States be established in Washington with a capital of \$100,000,000 fully paid. Let us assume the United States divided into twenty zones of operation, similar to the currency-association districts now proposed by the Aldrich-Vreeland measure, each zone of operation to contain a voluntary association of banks grouped around a financial and commercial center, in accordance with a plan to be worked out in detail. To form the operating associations, which we shall call banking associations, the banks within each zone should have the privilege of appointing from their own number a board of directors, who in turn may appoint a president or managing director of the association. Certain mistakes which crept into the Aldrich-

Vreeland bill must be avoided. The measure should be drafted so as to permit a bank to withdraw from the association at will; to restrict the obligations of each bank to certain transactions, in each case carefully examined and approved by the associations; and also to enable the associations, with the approval of the secretary of the treasury, to group themselves into subdivisions. One might simplify the formation of these associations by making them stock companies, each bank within a zone of operations having the privilege of subscribing its *pro rata* share, according to its capital and surplus.

In order that the board of directors of the United Reserve Bank in Washington may be thoroughly representative of the various interests and districts of the country, that it may be non-political, non-partisan, and non-sectional, a certain number of the directors, say three-fifths, should be appointed by the banking associations; a further number, perhaps one-fifth, should be elected by the stockholders: while the secretary of the treasury, the comptroller of the currency, the treasurer of the United States and others to be nominated by them, should fill out the remainder of the board. It might be advisable to provide that no director, excepting the *ex officio* members, should serve more than a certain number of years in succession.

In order that commercial interests be adequately represented, provision might be made that the members appointed by the stockholders should not be bank or trust-company presidents, and that these members should be elected preferably from the class of merchants and manufacturers. One would then have a mixed board, of whom three-fifths would be bankers, appointed by the banking associations, while one-fifth would be chosen from the commercial classes by vote of the stockholders, and one-fifth would be *ex officio* government members and the additional members appointed by them.

This board should have the right to elect one or two governors of the United Reserve Bank, who would be salaried officers appointed, like other bank presidents, for an indefinite time, irrespective of political considerations, and remaining in office as long as they render satisfactory service.

The share capital of the United Reserve Bank could be divided

among the banks of the country under a fair plan of apportionment, or the stock could be sold to the public. The dividends on the stock should be limited to, let us say, four per cent. Any profit in excess of this should go to the government. A provision that no one stockholder be allowed to have more than a certain number of votes should be inserted.

The United Reserve Bank should be authorized to perform the following functions:

(1) To accept deposits from the government of the United States and from members of the banking associations only. No interest should be paid on such deposits, but they might be counted as cash by the banks and trust companies making them.

(2) To buy from members of the banking associations, at a discount rate to be published from time to time, commercial paper having not more than twenty-eight days to run, and issued at least thirty days before the date of rediscounting. The aggregate amount which it might buy from each member should be restricted to a certain proportion of the unimpaired capital and surplus of such member, and the aggregate amount issued by one issuer of commercial paper to a member of the banking association and rediscounted with the United Reserve Bank, should also be limited to a certain proportion of such unimpaired capital and surplus.

(3) To buy from member banks, at a discount rate to be published from time to time, commercial paper having more than twenty-eight days to run, but in any case less than ninety days. The aggregate amount to be rediscounted by the United Reserve Bank from each member and the aggregate amount admissible from individual makers of notes should be restricted as under (2). Such paper, however, could be discounted by the United Reserve Bank only with the endorsement or guaranty of the banking association to which the member belonged.<sup>1</sup>

<sup>1</sup> In consideration of such guaranty or endorsement, the banking association would receive from the member handing in paper for re-discount a certain remuneration, let us say  $\frac{1}{4}$  or  $\frac{1}{2}$  of one per cent in the interest rate. The banking associations would, of course, like the clearing houses when clearing-house certificates are issued, have the right to reject any paper which they did not deem it safe or proper to guarantee or endorse.

(4) To buy, at a discount rate to be published from time to time, paper having no more than ninety days to run, drawn by a commercial firm on, and accepted by, a bank, trust company or banker, and endorsed by a bank, trust company or banker. One of these signatures should be that of a member of the banking association. Limits as to amounts of acceptances admissible from time to time for discount with the United Reserve Bank should be fixed by the central board.<sup>1</sup>

(5) To buy bills on England, France, Germany (and such other countries as may be decided upon), such bills to have a maximum maturity of ninety days, to bear one commercial signature, to be drawn on and accepted by a well-known foreign banking house and endorsed by a member of a banking association or a banker in good standing. The United Reserve Bank should have power to resell all bills that it might buy and to do all things necessary for their collection.

(6) To deal in bullion, and to contract for advances of bullion, giving security therefor and paying interest on such advances.

(7) To buy and sell bonds and treasury notes of the United States.

(8) To issue circulating notes, payable on demand in gold; such notes to be secured by bills, bought by the bank under provisions (2) to (5), and by gold to the amount of at least 33 $\frac{1}{3}$  per cent of the aggregate amount of outstanding notes.

(9) To establish branches in places where there are head offices of banking associations. Such branches under the direction of the central board of the United Reserve Bank, might do the same business as the head office. Each branch would have a local board, chosen by the board of managers of the local banking association, to which board might be added some members of the commercial classes appointed by the head office in Washington. This local board would supervise the business of the branch bank, and elect its salaried president, subject to the approval of the central board in Washington.

<sup>1</sup> It might be advisable to provide that in case of emergency the central board, with the approval of the secretary of the treasury and the President of the United States, might increase the limits fixed under (2), (3) and (4).



(10) To request banks or trust companies desirous of making use of the services of the United Reserve Bank, to keep with its branches a cash balance commensurate with the amount of business done by them. The United Reserve Bank should have the right to transfer sums of money from the account of one member to that of another upon request.

(11) To join the clearing-house associations of the various cities where the bank and its branches are located.

Let us now consider the plan, as above outlined, from the following points of view: First, would it be safe? Second, would it be effective? Third, would the vested interests of the banks have reason to oppose or favor it, and can the general prejudice existing against any such plan be overcome?

The chief criticism that has been raised against a central bank is that it is subject to the danger of control either by politics or by Wall Street finance. Would this danger exist under our plan? Could anybody acquire control? Nobody could do so if a provision were made that the stock should be divided among the 18,000 banks of the United States.<sup>1</sup> But even without such provision there would be no danger on this score. A man or a group of men acquiring the whole capital stock of the United Reserve Bank would, after all, acquire the right to appoint only a few members of the board, who would be in a hopeless minority against the combined members of the banking associations of the whole country and those representing the government.

But furthermore it is evident, with the restrictions placed upon the United Reserve Bank as to the transactions in which it might engage, and with the restrictions as to the earning power of the stock, that the control of the United Reserve Bank by one individual or a group would not offer any attraction.

As an investment it would not pay, because any earnings in excess of four per cent would go to the government, and as for securing help for speculative ventures or aggrandizement of

<sup>1</sup>The author is fully aware that there are only about 6,500 national banks now, but it is to be expected that under any new plan all national banks would become state banks or all state banks national banks. It would, however, lead too far to go into this question here.

power, this aim could not be achieved by the control of a bank restricted in its dealings to the purchase of short paper from member banks, and of three-months paper which could be acquired only from the banking associations. Taking into consideration all these safeguards, namely, the method of appointing the board, the restriction of income on the stock, and the limitation of transactions permitted, it is absolutely safe to say that under such a system any fear of undue financial or political control may be dismissed once for all.

Secondly, would the plan be effective? It is easy to devise a plan that would be ultra-safe, and not very hard to create one that would be effective, but to combine safety and effectiveness is difficult. Let us first determine what is the main object of a central bank, and then investigate whether the plan above outlined would fulfill this purpose.

A central bank acts as a central reserve of a nation. Its first duty is to see that a proper proportion is maintained between actual cash reserve and all demand obligations of the nation which are payable in cash at the option of the payee, but of which the majority are habitually paid by exchange of credits. Its duty in this respect is two-fold: on the one hand, to protect and to strengthen the country's holdings of gold, and on the other hand to establish and maintain a perfect system of credit, enabling the general banks to transform cash credits into actual cash with such absolute ease and certainty that the use of the cash credit, instead of the actual cash, will not cease, no matter what may happen. In other words, there must not remain the faintest possibility of hoarding during a crisis, or the system will fail. In order to assure this, cash credit must not only be as good as cash, it must be better than cash! The carrying of cash entails a risk of actual loss as well as of loss of interest; a cash credit is free from this first-named evil and, in addition, investments which can be quickly turned into cash credits bear interest. The general tendency of civilized people in a well-organized country must therefore be to free themselves as rapidly as possible from cash and to transform it into the safer and more economical cash credit or into assets which can be quickly transformed into cash credits. Every idle token of

money must, therefore, under a modern system return without delay into the central reservoir, where it must be unreservedly available for every legitimate demand for cash. There must never arise any doubt that a legitimate demand for cash will be met promptly and that legitimate quick assets can be turned into cash credits.

If quick assets can be promptly and reliably turned into cash credits, and if cash credits can be turned into cash at will, then it is certain that all such credits never will be turned into cash at the same time, because nobody has any use for so much cash and therefore he will not ask for it, as long as he is sure that he can get it.<sup>1</sup> This is the only basis on which our modern system of immense demand gold obligations, built up on a comparatively small amount of cash, is safe.

Let us use an illustration for this fundamental point:<sup>2</sup>

If after a prolonged drought a thunderstorm threatens, what would be the consequence if the wise mayor of an Oriental town should attempt to meet the danger of fire by distributing the available water, one pailful to each house owner? When the lightning strikes, the unfortunate householder will in vain fight the fire with his one pailful of water, while the other citizens will all frantically hold on to their own little supply, their only defense in the face of danger. The fire will spread and resistance will be impossible. If, however, instead of uselessly dividing the water, it had remained concentrated in one reservoir with an adequate system of pipes to direct it where it was wanted for effective use, the town would have been safe.

Ridiculous as these conditions may appear, the parallel with our own financial organization is evident. Our reserves of cash are entirely disconnected; they are insufficient for even a single institution in times of serious stress, and instead of being a protection they are a dangerous weakness, because the consciousness of insufficient protection causes one bank to try to draw on

<sup>1</sup>This applies only to the internal drain. We shall deal later with the demand for gold that might arise from without.

<sup>2</sup>This illustration is taken from the writer's pamphlet, *The Discount System in Europe*, published by the National Monetary Commission. The author begs leave to refer his readers to this article, of which the present essay forms the second part.

the reserves of others, and the very moment these mutual attacks begin, panic inevitably follows.

Our true conditions are, as a matter of fact, even more preposterous than those in the Oriental town, by reason of our law prescribing that a certain proportion of the deposits must be kept in cash,—a law which must be observed if a bank wants to preserve its credit. Not only is the water uselessly distributed into 18,000 pails, but we are permitted to use the water only in small quantities in proportion as the house burns down. If the structure consists of four floors, we are practically forced to keep one-fourth of the contents of our pail for each floor. We must not try to extinguish the fire by using the water freely in the beginning; that would not be fair to the other floors. Let the fire spread and give each part of the house, as it burns, its equal and insufficient proportion of water.

As long as the owners of houses threatened with fire know that the central water supply is well in hand, with one central power, available wherever danger may arise, everybody feels safe and is not frightened by the thought that if all the houses should burn at the same time there would not be enough water to go around. Though there may not be enough water for the last house that might burn down, even the owner of that last house would not ask that some water be kept back for him, because he realizes that unless the fire be stopped before it reaches him, his own little supply of water will not help him.

If, however, a central system does not exist, everybody will hoard water, trying to steal it from his neighbor or from the community by tapping some source in order to create a supply of his own. He will lessen thereby the full supply that ought to be led into the central reservoir, without protecting himself adequately in time of danger.

The main function and object of a central bank is to make every dollar which lies idle return to the central money reservoir to make it available to the fullest extent, wherever and whenever it can do good legitimately, and to provide a system of mains, by which it can be conveyed quickly to any point of danger.

Note issue is not a fundamental, but only a side question, and

it is very important to grasp this fully. If the British government should issue a government loan and use the proceeds to pay into the Bank of England in gold £18,400,000, thereby paying off its present indebtedness to the bank and providing a gold cover for the uncovered portion of the note issue of the bank, the latter could pay off every one of its sterling notes in gold. If this were done, the only change would be a change in pocketbooks, to enable people to carry gold instead of notes. The central-bank system of England would go on absolutely undisturbed. With or without the note-issuing power, the Bank of England would remain the central reservoir of gold. It could continue to protect England's gold holdings and to maintain the proper proportion between the country's demand obligations and actual cash. It would continue to guarantee the prompt transformation of cash credit into cash and of quick assets into cash credits.

This is possible only through the discount system. The banks know that they can, in case of need, rediscount their legitimate bills with the central bank. The central bank, on the other hand, having a large investment in bills of short maturity, can, by increasing its discount rate, withdraw from new investments and thereby strengthen its reserve. Incidentally, by increasing the interest rate of the country, it attracts foreign money, wards off gold exports, and by throwing part of the burden on the general banks brings about a general contraction of business.

Money flows where it can draw good interest in safety. Where credit is firmly established and financial organization sound, money flows easily from one city or country to another, for a difference in interest of a fraction of one per cent. It is humiliating to realize how large a margin in interest rates we must offer to attract money, as compared with our European competitors. This question and the working of the discount system, of which the central-bank system is a part, have been dealt with fully in my previous paper, so that I need not dwell on them here.

Elastic note issue, that is, the power of a central bank to issue notes not fully covered by bullion, is an auxiliary measure.



The central-bank system becomes more pliable and safer by this addition because, the lines being less rigid, the fear of reaching the end of the tether is not so great; and, furthermore, since the result to be reached is not exclusively dependent upon the discount rate, the latter need not be changed so often and so drastically as with an inelastic system.

To return to our metaphor: note issue represents an auxiliary reservoir. Where it does not exist, the men in charge of the central reservoir have to advance the price for water so as to discourage extravagant use whenever the available supply falls below a safe margin. Unsecured note issue enables the managers to use this auxiliary supply, which renders it possible often to provide for the needs without increasing the price for the water, where the increased demand is normal and only temporary.

To decide when to supply water freely, when to warn the consumer to save, and when to limit the supply without ever refusing to comply with legitimate demands, is the duty of the central bank. No automaton—no tax or fixed regulation—can perform it, but the best judgment of the best experts must indicate the policy to be pursued from time to time. In addition, it must be the exclusive care and responsibility of one institution, chartered and constructed for the single purpose of maintaining the proper proportion between demand and supply.

With us the general banks, which are the consumers and represent the consumers, are at the same time the regulators. Where everybody regulates himself, there is anarchy and chaos in times of stress. Money making and the maintenance of a safe proportion between cash and cash obligations are at times distinctly opposed functions, and the performance of these functions should lie in entirely separated bodies. The general banks must remain money-making concerns, administered with the full responsibility of being able to meet all possible cash demands by available cash credit. To guarantee that every cash credit can be met, if desired, by actual cash payment, and to avoid the possibility of such general demand for cash—this is the function of the central bank.

Let us consider whether these aims of a central bank can be



safely and effectively reached under the system above outlined. The great difficulty in the United States is the complete lack of modern bills of exchange, freely endorsed by the banks and passed on from hand to hand, as in Europe. With us there still prevails the old single-name promissory note, which, under our present system, is practically unsalable once it has entered the bank, and which therefore immobilizes our bank holdings.

To permit the banks to rediscount these promissory notes with a central bank would be the easiest way, but the criticism may be justly raised, that in doing so we should open the door to abuse. Hence the inclusion, in a scheme previously outlined by me, of the banking associations, which, having to guarantee the paper before it enters the United Reserve Bank, would carefully examine and sift it. The interjection of the banking associations would make the paper safe beyond peradventure and, if nothing else could be found or agreed upon, this system might well be adopted for the present.

The criticism, however, has been raised against this method, that it would be fairly clumsy and that in normal times the banks would try to do without it. Therefore it would remain only an emergency system, out of touch with the market in normal times. To meet this difficulty, it is proposed in this plan to empower the United Reserve Bank to take bills with not more than twenty-eight days to run directly from members, without the guaranty of the banking associations.

This thought developed from the following observation: Upon examining the report of the Reichsbank one finds that on December 31, 1908, it held in German bills M. 1,032,000,000; of which 44 per cent were payable within 15 days, 17.4 per cent within 16 to 30 days, 24.8 per cent within 31 to 60 days, and 13.9 per cent within 61 to 90 days. This brings out the surprising fact that the maturity of 61.4 per cent of all the bills held by the German Reichsbank was of 1 to 30 days. The average duration of all bills held by the Reichsbank is thirty-four days. A similar proportion could be shown by the Banque de France, where the average duration of all bills held is even less, namely, twenty-four days.

How is this to be explained? It means that if, when making

up its daily balance sheet, a German or French bank finds that on balance it needs money, it will send to the Reichsbank or Banque de France for discount its bills falling due the next following days. These central banks have a complete schedule for each city where they have an office, stating the minimum number of days that will be deducted at the bank rate, without any further charge for collecting the bill. To illustrate this procedure: the Reichsbank in Berlin will charge on a bill beyond M. 5,000 a minimum of four days for bills on Berlin, a minimum of five days on Hamburg, Bremen, Frankfort, and similar cities, a minimum of ten days for smaller bills on small and remote towns. This means that when the rate for call money and the bank rate are about even, a Berlin banker will send his bills on Hamburg to the Reichsbank for collection five days before the bills mature; if he collected them through his own correspondent in Hamburg, he would lose one day's interest at least, which would be consumed by the return trip of the money after the bill had been collected; and the longer the distance, the larger the loss of interest. When money is very easy, it pays the banks to lose that day's interest, and collect the bill themselves, since, instead of submitting to a discount of five days at, let us say, 4 per cent they might pay on call six days at 2 per cent or 3 per cent and still fare better. This illustrates how, by keeping its rate higher than the ruling interest rates, the central bank withdraws its funds from general business and accumulates reserves for times when stronger demands arise. The stronger this demand grows, the longer will be the bills which are being sent for discount to the bank, until they reach the permissible maximum of ninety days.

A consideration of these facts brought up the question as to whether it would not be feasible and conservative to allow such institutions as may be admitted to dealings with the United Reserve Bank to rediscount with it directly, and without the intervention of the banking association, legitimate paper having no more than twenty-eight days to run. It would appear that this could safely be permitted. A bill which has only a few weeks to run embodies a much smaller risk than one having three months to run. General conditions and the standing of

the bank offering the paper for discount, and of the maker of the note, can be judged with a fair degree of safety for a few weeks ahead. The United Reserve Bank would make it a rule not to buy thirty-day notes issued for the obvious purpose of being immediately rediscounted and renewed at maturity, but to acquire only paper originally issued as 2, 3 or 4 months' paper, in accordance with the usages of the trades in question. The bank examiners would be trained to ascertain infractions of the rule and, besides, the United Reserve Bank would notice them immediately when the new bill was offered for discount so promptly after the expiration of the old note. The shorter the maturities of bills, the stronger would be the United Reserve Bank's position.

While this plan would be of immense advantage to the banks, inasmuch as it would enable them without difficulty to turn into cash at once about one-third of the bills which they have discounted, at the same time it would not encourage reckless banking or speculation. No customer and no bank will dare to enter into extended commitments on the strength of an advance of twenty-eight days. What will happen after this lapse of time one does not know, and he must be prepared for possible retrenchment by the United Reserve Bank.

Moreover, some rule would have to be established that the aggregate amount of such short bills sent in for discount by any bank should not exceed a certain percentage of its capital and surplus, and that the aggregate amount of paper sent in for discount issued by one individual or concern should not exceed a certain part of such surplus and capital. This method would appear to be entirely safe; if deemed necessary the twenty-eight-day limit might be reduced to twenty-one days. In the writer's opinion a twenty-eight-day limit is conservative.

We should then have one rate at which the branches of the United Reserve Bank in the banking association cities would take short bills directly from members, and one rate, possibly the same, at which they would take longer bills from members with the guaranty of the banking association.

There remains to be established one more rate, the private discount rate, at which the United Reserve Bank would take

sixty or ninety-day bills, drawn by commercial firms on, and accepted by, a bank, trust company or private banker[as under(4)]. The private discount rate of the United Reserve Bank would be kept very low in the beginning, for the purpose of encouraging shippers at home and abroad to use the credit of American banks, where now they use foreign credit. Shipments of coffee from Brazil to New York and of cotton from Galveston to Boston are now usually financed by long drafts on Europe. Under this plan such banking transactions will be turned over to the United States. Bills will be drawn on American banks and bankers, instead of on London, Paris or Berlin, and instead of being financed by others we may gradually become the financiers of others. Not only will this increase our trade, but most important of all, once we establish the modern banking bill in the United States, its use will grow and our banks will reap the tremendous advantage of being able to invest their deposit money in assets upon which they can quickly realize at home and abroad. As the use of this modern paper increases, so will the financial safety of the banks and the business community.

These bills will be strictly commercial in character and it will be an easy matter to scrutinize the legitimacy of their origin. At least two well-known banks, trust companies, discount companies or bankers must accept or endorse them, and one of these names should be that of a member of a banking association. This is much more than any European central bank requires, and it should be entirely sufficient to provide against any political or financial danger in this respect. On the other hand, the powers given are far-reaching enough to bring about the most important change, *viz.*, the creation of modern American bills of exchange.

There remains to be considered one more field of activity for the United Reserve Bank; that is, its privilege of buying foreign bills having not more than ninety days to run. This power is necessary for obvious reasons. It would afford the United Reserve Bank an opportunity to employ its idle funds in times when the management should decide upon a policy of withdrawing funds from use in the United States, and it would enable

the bank to accumulate an interest-bearing gold reserve; for foreign bills are available for the purpose of drawing gold from foreign countries, and they also serve as a means for warding off withdrawals of gold.

We now have a fair outline of the normal functions of the United Reserve Bank. Though restricted in its dealings to the utmost limit of safety, with respect to its scope of transactions and to its circle of clients, its effect will be most far-reaching.

The cash reserves now scattered and useless will be concentrated into an effective central reserve. The general banks will hold a sufficient amount of till money for their requirements, but as a reserve they must hold a cash balance with the United Reserve Bank, commensurate as at present with the aggregate amount of their deposits. If cash is withdrawn from the general banks, they in turn will draw on the United Reserve Bank for their needs and will replenish their balance by sending to it for discount short or long bills. As a result the dreaded cash withdrawal will lose its terrors for the banks.

If a Chicago bank withdraws its balance from a New York bank, all the latter has to do is to notify the United Reserve Bank's branch in New York, by a transfer check, to transfer the amount in question from the account of the New York bank to that of the Chicago bank. Wherever branches of the United Reserve Bank are established, the wasteful remittances of cash between members will cease. The bank will act like a huge clearing house for the settlement of balances between various sections. Millions are now constantly in transit, moving to and fro, crossing and recrossing one another in opposite directions. Hundreds of millions are kept in scattered balances, which can be centralized under the new system.

While banks now immobilize their assets by buying commercial paper which is legitimately issued, but which is practically non-negotiable, and while they use for quick assets call loans on the stock exchange, that cannot be called in a panic or a time of stringency which falls short of panic, the new system makes commercial paper a quick asset which can be converted into a cash credit or into actual cash. Our present scandalous system, of attempting to regulate the money market of the entire



country by first pouring money into the stock market, and then withdrawing it, creating inflation and exorbitant security prices, followed in due course by stringency and unnecessary price depression, will give place to more orderly movements, as our discount markets develop.

This plan would be incomplete if it did not touch upon, without discussing in detail, the question of the government bonds and the notes issued against them by the national banks. It is certain that this question must be dealt with in a way entirely fair to the national banks. Otherwise they will oppose the plan. Having bought these bonds under the note-issuing privilege, they are entitled to due consideration if this privilege is to be withdrawn. It is most opportune that, whether we want a central bank or not, our miserable system of bond-secured note issue has at last come to a fatal *impasse*. One of the most beneficent influences of the construction of the Panama Canal is that it is opening our eyes to the impossibility of linking together the aggregate amount of the funded debts of a great nation and the aggregate amount of currency in the pockets of the people. There is no doubt that this foolish inflation of our currency and of the price of our government securities must now stop. There is furthermore no doubt that elasticity means expansion *and contraction* and not expansion alone, as results from our present currency system.

In order to secure an elastic currency and a safe basis for a United Reserve Bank, we must reduce our outstanding currency somewhere, so as to substitute the new elastic note issue—an issue that will contract, so that it can expand with safety. One way would be an inverse conversion; that is, a gradual withdrawal of the existing note-issuing power with a simultaneous conversion of our government bonds into obligations bearing a somewhat higher rate of interest, thereby safeguarding the banks against a loss in the price of their bonds. This would bring the price of our bonds to a normal level, like those of England, France and Germany, whose people can afford to hold government securities. The higher interest rate to be paid by the government to the people would be the most wisely spent money in our entire budget. There are several other



ways of dealing with this problem. Suffice it to say here, that to solve this part of the problem does not offer insurmountable difficulties. It will be necessary only to investigate which method is the best, and offers the least resistance.

## II

Let us now turn our attention to the criticisms of those opposed to a central bank system in the United States.

Mr. Morawetz says<sup>1</sup> that the territorial expanse of the United States is too large for such a system, that the bank would be one of too "colossal magnitude" and that it would be necessary to place the central bank in a position to regulate and control financial conditions throughout the country. He furthermore claims that the central bank would either "have the power to discriminate," and therefore "the managers would be placed in the attitude of beneficent dispensers of bank credit and of prosperity" or, if properly restricted, the bank would be "a penny-in-the-slot machine for obtaining credit," the resources of which might be drawn upon too heavily by "banks engaged in speculative business or located in sections of the country where interest rates are high."

The size of the country is an argument not against, but for, a central-bank system. A small and unimportant country could live with a less perfect system, and could lean upon the other central-bank countries in times of need. The immensity of our country, our resources and our transactions renders it absolutely necessary for us to adopt the most efficient system in existence.<sup>2</sup> The greater the area, the more perfect the system must be in order to reach every remote point. The plan here outlined covers the whole country. Each section of the United States, as a matter of fact, will have a central reserve bank of its own, where directly—or indirectly through its correspond-

<sup>1</sup> Victor Morawetz, *The Banking and Currency Problem in the United States*, The North American Review Publishing Co., N. Y., 1909; and *Address on the Banking and Currency Problem and the Central Bank Plan*, delivered at the Finance Forum of the West Side Y. M. C. A., Nov. 24, 1909.

<sup>2</sup> Our weight has become too heavy and threatens, at times, to break the European machinery which we use to make up for the lack of elasticity in our own system.

ents—each bank in the United States will enjoy the advantages offered by the United Reserve Bank. While the general policy will be settled at the head office, in consultation with the presidents of the branch offices and the members of the central board, the actual business will be done by the branch offices, which will act as separate units for each section.<sup>1</sup> There will be this most important difference, however, that, as far as reserves are concerned, they will be united and act as one. The surplus of one section will be available for other sections and the interests of all together will bring about the general policy of the United Reserve Bank. The effectiveness of this plan would not be interfered with by a provision that the discount rates of all the branches need not necessarily be the same. Thus it might be possible to meet undue expansion in one section of the country by increasing the rate of that branch without increasing the rate for other sections.

As outlined here, the United Reserve Bank will not be a "penny-in-the-slot machine," any more than the European central banks, which discount and advance upon uniform conditions published from time to time. The United Reserve Bank would certainly have the right to refuse any paper that did not appear safe or legitimate. Furthermore, the power to increase or decrease its rate and its circulation would place it in a position amply to protect itself and the country. At the same time, the restrictions placed upon it absolutely preclude any danger of its becoming "a beneficent dispenser of bank credit and prosperity." The fear that some section, where interest rates are high, might absorb all the available means of the United Reserve Bank, may be dismissed from consideration. The proportion to be fixed between capital-and-surplus and amount admissible for rediscount with the United Reserve Bank would prevent such abuse. Besides, as this facility of rediscount is a most valuable element in the strength of a bank and its real reserve, no conservatively managed institution would go to its full limit in normal times. An institution known to abuse

<sup>1</sup> Even the banks at Washington, D. C., would deal with the United Reserve Bank only through a local branch office, like all the other banks in the country.

its rediscounting privilege would quickly lose standing in the community.

Mr. Morawetz's next criticism is directed against the "control of the bank." It is contended that there would be too much one-man control, or control by a group; that the bank might become involved in political strife or become the issue between contending political parties. The first two points we have already answered at length, and little remains to be added in this respect. The central office would merely indicate the policy; the branches, which practically are under the supervision of the local banking associations, would undertake certain well-defined, safe transactions, into which no element of politics could enter, any more than it enters into our clearing houses. No political patronage whatsoever would be connected with the United Reserve Bank. A conscientious and honest man, not even brilliant, would be required to fill the presidency, at the pleasure of a board which, as we have seen, would be made up of the best men the various banking communities could secure as delegates. There is no reason, despite our critics, why such a board should not work harmoniously and effectively, and whoever examines the plan from an unbiased point of view will see no danger of excessive power being vested in one man.

Mr. Morawetz claims that great disaster would follow if the central reserve bank, once established, should be abolished again. Quite true; but should we hesitate to build a water reservoir, because we feel that it would be a calamity if one day it were to be removed? It is safe to say that if a system were established as safe as the one here outlined, it would develop as our country develops. Its requirements might change; but just as little as we can go back to the old mail coach after the railroad, just so little can we return to our present impossible system, once we have modernized it. If frauds or patronage fill the post office or the custom house or the army and navy or the treasury, we should clean up but not abolish those departments. Though it is difficult to perceive how under our plan abuse could develop, in such a case we should clean the house, but we should not destroy it. Mr.

Morawetz concludes his argument by saying that a central bank should not be tried because if it should fail, the cause of true reform would be postponed for a generation. In so doing, he reminds me of a man who should refuse to be born, for fear that he might die!

Now let us analyze Mr. Morawetz's plan.<sup>1</sup> Under it, Mr. Morawetz provides for a board of managers, to be elected by the banks. This board, in conjunction with the secretary of the treasury, will have the right and duty of dictating to every bank in the United States what percentage of cash it must hold against its outstanding notes.

We grant that such a board could be so constituted as to be

<sup>1</sup> [At the request of the editor, Mr. Warburg has left this section as written in the spring of 1910, though Mr. Morawetz has since modified his plan in some particulars. —Ed.] Mr. Morawetz's plan provides for so-called "note-issue associations," embracing practically all the national banks of the country. The banks will appoint a board of managers, who in conjunction with the secretary of the treasury will have authority to establish branches wherever they deem it advisable, the main office of the association being at Washington.

The main function of the central office and the branches will be to regulate the issue and redemption of notes. Each national bank will be entitled to issue against its general assets an amount of notes equal to its capital stock. The board of managers, however, has the right to increase the amount of note issues of the banks to some fixed percentage of the capital stock of the banks, and this board also has the power to reduce such increase as it may have authorized. Each bank having taken out notes will be required to keep on deposit with the association, as redemption fund for their payment, a sum of lawful money equal to such percentage of the notes as may be prescribed from time to time by the board of managers and the secretary of the treasury. The required percentage of the redemption fund will be fixed from time to time by general order applying equally to all the banks, but the required percentage will never be less than twenty per cent of the outstanding notes. It is left open for further discussion in the plan whether each bank shall receive a special note issue and shall keep a separate redemption account, or whether it will be practicable to have one joint issue and one joint redemption account.

The general idea of the plan is that when notes are issued, they shall be covered by a substantial amount of cash to be set aside in the redemption fund, let us say forty to seventy per cent. The board of managers will have the power, in times of stress, to allow a reduction of this reserve in the redemption fund, which, however, may not be lower than twenty per cent, and in times of easy money, the central board may decree that this redemption fund be increased up to one hundred per cent, so as to withdraw the notes, finally, from circulation.

The plan provides for the withdrawal of all national-bank notes secured by government bonds. Some provision has been made to protect the bonds owned by the banks.

safe; but every argument raised by Mr. Morawetz against the dangers of political or one-man control of the central-bank board, can be applied with equal force to his board of managers. However, the power of this board of managers is more far-reaching and of broader scope and therefore more dangerous than that of the board of the United Reserve Bank. While the central bank is a passive institution, Mr. Morawetz's board of managers is an active institution. The central bank establishes rates at which it is willing to do business, but it does not force anybody to do business with it. If the bank rate should be 5 per cent, banks in the south may find it to their advantage during the cotton-crop movement to rediscount with the United Reserve Bank, while banks in New England may for the time being dispense entirely with its services, and therefore not be affected. If, however, the board of managers, under the Morawetz plan, issues its command that all banks must increase their reserve against notes from 30 per cent to 40 per cent, it is a direct interference with the business of every individual bank in the country, no matter if money is easy in Boston and tight in New Orleans. Expansion and contraction is ordered, whether it is needed or not, for every one at the same time. How about "expanse of territory" in this case? Is it possible to regulate all the varying demands of the varying sections of our immense country at the same time by one "You must!"? It is Mr. Morawetz's "You must!" against the United Reserve Bank's "You may!" This difference is most important.

Furthermore, while the United Reserve Bank is enabled to perform its functions by the freest return of idle money into the central reservoir, thus avoiding its being needlessly held in separate reservoirs, Mr. Morawetz would force every one at the same time to withdraw more cash and to lock it up as special collateral for new notes. This power to influence money rates, vested in a few men, would, from Mr. Morawetz's own point of view, form a grave danger of abuse.

Leaving aside this phase of the question, the system is unsound for these further reasons:

- (1) Our examination of modern systems has shown that note



issue is only a side question. It is a poor plan, therefore, to try to solve the main problem by attacking an auxiliary part of it. It is just as unsatisfactory as the attempt to repair a broken-down dynamo by readusting the storage battery attached to it only as an auxiliary emergency device.

(2) Notes issued by banks must be considered as demand deposits, since for both, payment in cash may be demanded. It is an unfair and unscientific plan to secure one depositor by 50 per cent or 60 per cent of cash, while the other must be satisfied with 20 per cent.

(3) It is a faulty system that will change practically the whole outstanding currency carried in the pockets of the people into money which the banks may not hold when it is paid in to them.

(4) It is an anomalous and unsound system that allows a bank to pay its creditors in notes which it may not carry as reserve, or that forbids it to carry as reserve against a deposit, notes the very receipt of which may have created such deposit.

(5) The Morawetz plan tries to solve the problem exclusively by issuing more or less currency. But it is cash credit, not currency, which is required most frequently. The two are not identical.

(6) A bank is safe in granting time loans against time money which it may have taken; the excessive granting of time loans (loans and discounts) against call loans (deposits) is dangerous and often the cause of financial disturbances. A bank already overextended, makes its condition more dangerous by granting further accommodation through note issue. For increased note issue means an increase of demand obligations, while rediscounting of paper with a United Reserve Bank means an outright sale of assets. That is, cash credit or cash becomes available without the creation of a new and dangerous demand obligation.

(7) The vicious system of separated, disconnected and competing reserves remains the same.

This is only an outline of the main arguments against Mr. Morawetz's plan. It would lead too far to follow up in detail every simple point.



What would the effect of this system be? There were in the United States in 1908, according to the report of the comptroller of the currency:

	Nat'l Banks.	State B'ks.	Trust Co's.	Sav. B'ks.
Number	6,853	11,220	852	1,453
Cap. Stock. .	\$921,000,000	\$502,000,000	\$278,000,000	\$36,000,000
Surplus. . . .	566,000,000	217,000,000	370,000,000	244,000,000
Cash. . . . .	889,000,000	308,000,000	118,000,000	44,000,000
Deposits. . .	4,374,000,000	2,937,000,000	1,866,000,000	3,479,000,000

Under the Morawetz plan, the 6,853 national banks, which are money-making concerns, competing against one another, with deposits of \$4,374,000,000, would have to bear the burden of regulating not only their own conditions, but also those of the other institutions, having deposits of \$8,282,000,000. But let us suppose the state banks all turned into national banks. We should then have 18,073 banks, with a capital of \$1,423,000,000; surplus \$783,000,000; cash \$1,197,000,000; deposits \$7,311,000,000. In order to bring the state banks up to the standard of the national banks, figuring only a twenty-per cent reserve, a cash reserve of \$1,462,000,000 would be required, being an addition to bank cash that must be withdrawn from circulation of \$265,000,000. Every bank will have the right to take out notes to at least the amount of its unimpaired capital, and the board of managers may authorize larger issues. Let us take the minimum, \$1,423,000,000, and a reserve of only forty per cent. This would mean an additional withdrawal of cash of \$568,000,000, or a total of \$833,000,000. This means that two and three-fourths times the amount of cash held at present by all state banks, or about the total aggregate amount of cash now held by all the national banks would have to be withdrawn from circulation and be replaced by bad notes—bad because they cannot be used by the bankers as reserve money. Taking the above figures as a basis it means that there would be in the hands of the public about \$1,400,000,000 of national-bank notes, while the circulation of such notes under our present system amounts to about \$700,000,000.

When there is a demand for more currency, and not for more

credit, the plan may work for a while, though weakening the currency; but when there is currency enough in the pockets of the people, while demand for additional credit continues, every note issued will return at once through the redemption fund and must be paid in cash. Every bank will then try to accumulate legal-tender notes, to strengthen its power of granting credits, and will therefore at once present for redemption the national-bank notes that it receives.

Crises have frequently arisen because people believed that the top wave of demand for accommodation had passed, and all means had been spent in this expectation, when the main pressure had not yet begun. If during such critical times gold withdrawals from abroad should begin, it is difficult to see how under this plan reserves could be strengthened, for it is to be expected that in such case the reserves would already be at the lowest point. Then we should again witness the critical times when one bank, by refusing to renew its call loans and thus throwing the burden on the others, creates a credit balance for itself in the clearing house, thus strengthening its cash balance at the expense of the others. Retaliation would follow, and panic would be in sight in the future just as it has been in the past. The weakness of our present system in this respect would remain unchanged.

This plan would leave the treasury money either wastefully piled up and withdrawn from circulation, or it would leave to the secretary of the treasury arbitrary power to dispense favors by depositing the funds wherever he may prefer. It would leave promissory notes as immovable in the future as in the past, with no hope of ever developing a modern system of bills of exchange. I have no hesitation in saying that it would be a most reckless experiment, on entirely new and untried lines, and it would in my opinion lead to certain disaster.

Mr. Morawetz's plan contains two suggestions: one, as we have seen, being the regulation of reserves against note issue, and the other being the creation of sectional reserve banks. It is greatly to be regretted that Mr. Morawetz has emphasized the first scheme and touched only slightly upon the second. It is sincerely to be hoped that he will work out in detail this plan

for sectional reserve banks, which he desires to be at all times in a position to furnish reserve money to the several banks in their sections by paying checks drawn against the deposit accounts of the banks or by rediscounting paper offered by them for that purpose.

I am confident that Mr. Morawetz will soon reach the conclusion that these sectional reserve banks must be endowed with all the powers and charged with all the duties given under our plan to the United Reserve Bank branches; otherwise they will be nothing but safe-deposit vaults, which will have to hold for each bank the exact amount of cash received from it for safe keeping. They can not go a single step further without incurring the gravest danger unless they have some central bank to fall back upon, or unless they are themselves central banks, that is to say, disconnected central-bank branches. Mr. Morawetz tries to cover the weakness of decentralized reserves by providing that the several sectional reserve banks be authorized to make arrangements with one another in order to facilitate exchanges between different sections of the country. But there must be more than this authority to make arrangements with one another with a view to facilitating these exchanges. These sectional reserve banks must in the end act as a unit. Otherwise we shall have a recurrence of our experiences at the end of 1907, when one reserve center closed itself against the others, when enforced credit was established *within* each financial center, indeed, but when New York, Chicago, Philadelphia, Boston, Pittsburgh, and all the others, would not accept even the joint obligation of all the banks of their sister cities. Obligations between cities remained payable in cash, and distrust among these centers brought about the actual phase of the gold premium and the long period of general suspension of cash payments. Should a common foe attack Boston and New York, would Illinois keep her soldiers at home, or would she differentiate between Boston and New York? The knowledge that all will stand together gives a feeling of confidence and safety. It is the same with our financial reserves: they must be held united under one direction, to be thrown where they are needed and to be withdrawn from places where they are superfluous.

The joint credit of the nation must stand behind the reserves, insuring unlimited confidence that nothing will be able to shake.

There must be one big reserve, one note-issuing power, one big bank, which will be neutral, administering impartially and economically the funds of the treasury of the United States, and issuing notes that are good enough not alone for the people, but also for the banks to be counted as cash. Instead of 20,000 institutions carrying an average of 8 per cent cash against their deposits and notes, what we need is one big institution with a capital of \$100,000,000, acting as reserve for all and maintaining a normal reserve for its notes and deposits alike of probably 80 per cent instead of 8 per cent. By following the central bank plan and adapting it to our conditions, we know with certainty that we are following along lines which have been thoroughly tested elsewhere and have led to success everywhere. Therefore, even with equal advantages otherwise, the central-bank plan should prevail.

In fairness to Mr. Morawetz it ought to be stated that he has never denied the superiority of the central-bank system. In fact, he advocates its adoption wherever it can be done with safety, but he believes that our peculiar conditions render it impossible to evolve a plan which will be at once safe and effective. Fear of a dangerous centralization of power has led him to prefer an attempt to control a scattered note-issuing power and has induced him to advocate separate sectional reserve banks rather than an actual unification of reserves.

The object of this essay has been to show that these half measures will not afford adequate relief and that they invite, and even to a larger degree, the very dangers which are supposed to be inherent in the central bank plan. On the other hand this essay has been designed to prove that it is possible to evolve, on the sound principle of a central bank, a plan which will not only be effective but at the same time meet the difficulties which Mr. Morawetz has so forcibly pointed out. Through his criticism he has helped us gradually to perfect the present scheme, and now that we have perhaps succeeded in meeting his objections, we trust that he will continue to help, not only by criticism, but by coöperation in further developing the scheme on lines which he himself has recognized as at least ideally the best.

## III

Professor Sprague has published an article entitled "The Proposal for a Central Bank in the United States: A Critical View."<sup>1</sup> The conclusions which the author reaches in this essay are as follows:

A central bank does not appear to be either required or well suited to relieve our financial difficulties. On account of the absence of branch banking it would not be able to handle the government funds in a satisfactory fashion, or to provide an elastic note issue. *Branch banking is an essential preliminary, if we are to have a Central Bank of anything like the European type*, and there are powerful objections to such a change, the discussion of which does not fall within the scope of this essay.

Neither from the historic nor from the practical point of view is this conclusion correct. Effective central-bank systems existed in Europe before the branch-banking system was evolved. The Bank of England was organized in 1694, the Banque de France in 1800, the Bank of the Netherlands in 1814, and the Bank of Austro-Hungary in 1815. In all these countries the central banks performed their duties effectively during a period when banking concentration in the modern sense had not begun and when private banking firms were still transacting the main banking business. The phenomenal growth of the joint-stock banks, the absorption of private firms, and the all-embracing development of the present branch-banking system are an evolution which has taken place in Europe almost entirely within the last thirty years, and which reached its present predominating importance only within the last twenty years. The evolution of branch banking is not incidental to a central-bank system, nor is the central-bank system the outgrowth of branch banking. Branch banking, in its present form, is incidental to the unlimited power of expansion and concentration which followed the evolution of the modern stock company, the corporation.

From the practical viewpoint it is a mistake to think that branch banking is a preliminary step essential to a central-

<sup>1</sup> *Quarterly Journal of Economics*, vol. xxiii, May, 1909.



bank system. The influence of the central bank is stronger with a system of small and disconnected banks than with enormous branch-banking organizations which, singly or combined, are so powerful that at times they are able to pursue a policy of their own in contravention of that of the central bank. While it is true that when these banks coöperate with the central bank, the latter may accomplish more immediate results, the fact remains that these larger institutions are able, at times, to emancipate themselves entirely from the influence of the central bank and that when in the end they are forced by circumstances to fall back upon the reserves of the central institution, the sudden weight is such that the central bank finds it difficult to carry the burden.

Enormous banking concentration has been watched by the managers of central banks with a feeling of concern rather than with a friendly attitude. The central banks look upon the independent and smaller institutions as their most loyal followers, and the central banks stand, as a matter of fact, as protectors for the smaller institutions against the aggression and the overpowering influence of the larger ones. However, the jealousy between the large banks and the central banks, sometimes prevailing in Europe, need not exist with us, since in Europe the central banks compete, to a certain degree, with the general banks; a situation which would be avoided by us under the present plan. One might dissolve to-day all European branch banks into the many independent banks and banking firms which originally constituted these big concerns, and the central bank system would not suffer in efficiency from such a change. One might eliminate all the branches of the central bank, and the central-bank system would still remain efficient though it would achieve its results in a somewhat slower, less direct and hence less economical manner. On the other hand, the elimination of the central-bank system in England, France or Germany would force the smaller independent banks to surrender at once to the big banks. Without the protection of the central bank they could not survive.

*The basis of the central bank is the centralization of reserves and what Professor Sprague calls "the fluidity of credit."*



*Eliminate these two, and the central-bank system must fail.*  
Professor Sprague says in respect to this:

The fluidity of credit is absent in this country, and will remain absent while we wisely continue to prefer banks managed by persons with extensive local knowledge to branch banks subject to bureaucratic managers, acting under general rules laid down at a distant head office. For this reason we cannot expect our money markets to be subject to the comparatively slight and distant influences exerted by a central bank. It would be necessary to concentrate bank reserves to such an extent that every banker would feel that his safety depended upon the situation of the central bank.

To begin with the last sentence of Professor Sprague's observations, it has been shown in the previous chapters of this essay that the absolute concentration of banking reserves into one central reservoir is the very foundation on which a modern structure should rest, and there can be no doubt that every banker in the United States would be satisfied as to the absolute safety of reserves under such a system of centralized reserves, for which, as a matter of fact, the credit of the entire United States would be pledged.

Professor Sprague's suggestion that fluidity of credit is based upon branch banks cannot be admitted. What does fluidity of credit mean? The very expression points to a credit that is liquid; it means the very thing to which I have so often and so insistently drawn attention, the question of rendering liquid the assets of a bank. Whether we had branch banks or not in the United States, the present system of issuing and handling American bills, which form non-liquid assets in the hands of the banks, would stand in the way of fluidity of credit. A central bank in the United States, even with a fully developed branch-banking system, can not effectively perform its duties unless we find some way of making these immovable promissory notes movable instruments of credit. The object of this essay is to show how a central-reserve-bank system, as here proposed, could fill the present need in this respect and pave the way for further development in the right direction. Professor Sprague's main arguments are based upon the mistaken idea

that a central bank in our country would need thousands of branches in order to *deposit* equably all over the country its own and the government's moneys and in order to *distribute* impartially its notes among the banks.

To quote his argument in this particular :

The manner of putting this vast sum (being the balances of the United States government) into general use would be equally without precedent. Without doubt there would be a general demand that the deposits be used with a general degree of approximation to population and the supposed needs of different parts of the country. At this point an insurmountable obstacle would be encountered. To lend directly to the business community would require an impossible number of branches. Lending at the relatively small number of branches which we have assumed might be established would not accomplish the purpose.

In order to distribute its funds widely, the central bank would be obliged to lend to at least as many banks as there are localities ; and, since the selection of a single bank would give rise to charges of favoritism, the bank would be certain to lend to all the banks. The central bank would be obliged to decide between the claims of 15,000 or more banks.

This shows an entirely erroneous conception of the activities of a central bank in general and of our United Reserve Bank in particular. Under our plan, the central institution would neither deposit moneys nor distribute notes ; it would discount paper and collect discounted bills as they fall due. Depositing moneys is an operation in which the initiative would rest with the central bank and in which the danger of favoritism might be lurking. For the operation of discounting bills at a published rate, the initiative rests with the general banks and, within certain limits, with all banks alike. The United Reserve Bank does not reach the banks, but the banks reach the United Reserve Bank ; and the organization as here proposed would enable each bank in the country, directly or indirectly, to reach the central institution.

While as a matter of safety, economy and efficiency, a number of branches as proposed in our plan would certainly be advisable and feasible, there is no need for thousands of

branches to reach every single point where banks are in existence. Professor Sprague evidently does not appreciate the spreading power of the discount rate. When promissory notes or "bills" become "bills of exchange," money for safe and legitimate purposes flows easily from one end of the country to the other, and the higher the development of the discount system, the more the spreading power of money will be felt and the safer our system will become. While our plan does not attempt to provide the highest degree of fluidity for the present, it will create conditions under which the spreading power of the discount rate will be felt at once, and that will ensure efficiency for the United Reserve Bank and safety for the country.

We cannot imagine that the prices for staples will ever vary greatly between New York and San Francisco in spite of their territorial separation. The maximum difference would probably be the cost of transportation between the two cities. This is explained by the fact that we have established certain brands or standards as the basis of our dealings, which enable us to purchase and sell by letter or telegram without negotiating for individual bags or boxes which we sample and select. Without this method we should deal with necessities as we deal with luxuries, paying for each article a fancy price, which price may differ widely in the various parts of the country, though the quality be the same. In this respect the bills receivable of an American bank are like a collection of curios, selected with care and pride by the president of each institution, but difficult of sale unless another collector is found who happens to be interested in the same article, and who does not possess too many of the same kind already. Bills receivable in Europe are like so many bales of cotton, bushels of corn, or bags of coffee, standardized, homogeneous articles, which can be sold at once. The discount rate of the central bank, on the strength of which the general discount market develops, is a potent factor in bringing about the creation of standardized bills of exchange. This evolution in the United States also will follow the establishment of a United Reserve Bank, which from the beginning, even with our present conditions, will be able to provide a fluidity of credit sufficient to make the plan effective.

When we conceive clearly the fundamental ideas underlying the working of a central-reserve banking system, we see the lack of force in Professor Sprague's argument that "our difficulties would appear, as in the case of government deposits, as soon as the attempt was made to place the notes where they were really needed,—in agricultural sections of the country," in view of the difficulty which he foresees, that the banks generally would be too eager to secure these notes and use them as reserves. Under our plan a balance with the United Reserve Bank is equivalent to cash in hand, and therefore there will not be an eagerness to secure any notes, except as they may be required for actual circulation.

Professor Sprague appears inclined to think that a further danger inherent in a central-bank scheme would lie in the direction of increased expansion. Under existing conditions, in his opinion, the risk of undue expansion could be averted and "normal seasonal variations in credit requirements could be readily met if our banks were less given to the habit of lending to the full extent of their resources in months when the course of business gives them an abundance of cash." His final recommendation is that the six largest New York national banks should hold reserves of 30 per cent in times of financial quiet, and that they should use these reserves freely, without considering the 25-per-cent limit, in times of financial disturbance. Incidentally the suggestion is made that reserve banks and central-reserve banks be not allowed to pay interest on bankers' balances. These suggestions are coupled with a curious panegyric, praising the use of the clearing-house certificate, with a somewhat disguised recommendation of partial suspension of payments as a legitimate means of meeting extraordinary demands, and with an attack on the New York banks on account of the "ignorance of our bankers of the only method which experience in other countries has shown to be uniformly successful in allaying financial panics." The method here referred to by Professor Sprague consists in meeting unreservedly, by freely paying, any demand for cash made upon the banks. In this respect he makes the following statement:

We already have far more centralization of banking power in New York than is generally realized. Before the crisis of 1907 the six largest New York national banks held net bankers' deposits of \$305,000,000 out of a total of \$410,000,000 of such deposits held by all the national banks of the city. It is somewhat disconcerting to find that these banks, which held a reserve of \$140,000,000 in August, 1907, still held \$110,000,000 in December, 1907.

No stronger argument can be made in favor of a central bank than is contained in this statement. Once a panic begins under our present system of decentralized reserves, there is no other means of salvation for reserve and central-reserve banks than to stop payments. In their anxiety the country banks, which held \$305,000,000 of balances in New York, would have withdrawn the entire \$140,000,000 available in New York in August, 1907, and while this process of diminishing reserves in New York was taking place, it stands to reason that the demand for cash within New York by the other depositors of the New York banks would have increased at the same dangerous rate. A system of decentralized reserves without any provision for transforming cash credits readily into cash must inevitably come to grief in a period of distrust, no matter whether the New York banks keep reserves of 30 per cent or 25 per cent in easy times.

Professor Sprague does not appreciate the difficulty these six banks would have in realizing when conditions for legitimately decreasing the reserves actually prevail. These banks are primarily money-making concerns; if, during times of strong demand for accommodation, they should refuse to grant it and call-money rates should rise to extraordinary heights—as they inevitably must under our present system—these Wall Street banks would be accused at once, as they always have been in the past, of greed and manipulation. If they should meet the demands, yielding to such clamors, their reserves would soon diminish, and conditions would remain as heretofore. When the panic came, as come it inevitably would, it is more than probable that the reserves of the banks would already be below 25 per cent.

Furthermore, if we carried out Professor Sprague's sugges-



tion, that the central-reserve banks should not allow interest on deposits by other banks, the immense balances kept by country banks in New York would cease, and the restrictive power which Professor Sprague wants to apply to these banks would thereby become void. These large amounts are not kept in New York for the sole purpose of acting as a safe reserve, but they are sent to New York to act as "on call" assets which at the same time earn interest. It is for this reason that Professor Sprague's remarks are not justified, when he says: "The failure to adopt proper methods seems to be due not so much to inability as to a failure to recognize the responsibility of their position by the New York banks which hold bankers' deposits." Country bankers demanding interest on their balances cannot expect to have them kept in cash.

It is strange that a writer searching for remedies on the lines of the above suggestions should find fault with the central-bank plan, for the reason that, as he believes,

it would not be able to exert a restraining influence upon the expansion of credit, because it would have no means of carrying out a precautionary policy. Is it not certain that, in the eager search for funds in times of active business, the other banks would resort to it for heavy loans? Doubtless a considerable measure of accommodation would have been thus granted if we had possessed such a central bank in the years before the crisis of 1907, even though it had been managed with far more conservatism than we have any reason to be certain of securing at certain times. Every dollar thus borrowed would have been an addition to the extension of credit at a time when restraint was needed, not expansion.

The central bank would have been creating a certain amount of credit expansion, which its later power of contraction could certainly not have exceeded, and probably could not have equaled, because the volume of credit cannot be largely diminished without serious disturbances. The power to issue notes by a bank of this kind would be a positive evil unless it were strictly reserved for use only upon occasions of actual emergency.

It is evident that a central bank managed with the single object of watching expansion and contraction, and of maintaining the safe proportion between cash and cash obligations, a



bank which cannot be swayed in its policy by any prospect of gain, and a bank the management of which is not subject to the immediate pressure brought to bear by the customer in need of accommodation, will be in a vastly better position to form a clear opinion concerning the larger point of view of the country's financial conditions than a local money-making bank. The central bank would not be subject to the same temptations nor to the same attacks, in case it should deem it necessary, in order to force general contraction, to insist on higher discount rates; but, incidentally, its very existence would prevent the exorbitant rates which from time to time are inevitable under our present system.

Professor Sprague's argument that "the central bank would bring about exclusively further expansion of credit," would be sound only if we did not provide for contraction at the same time and from the very beginning. A substitution of notes of the United Reserve Bank for either the bond-secured currency or the greenbacks presupposes from the outset that into our present ever-expanding currency we should inject a large amount of currency which will contract and which must return to the United Reserve Bank the moment that this institution, in easy times, decides to collect its short bills without renewing its investment in them.

No European system provides, as our plan would do—as a logical development of existing conditions—that banks should maintain so substantial a proportion of their deposits as a cash balance with the central bank. This in itself is a regulator; and even if, on the other hand, owing to our present conditions, the United Reserve Bank did not have the same power as that enjoyed by the European central banks, thanks to the importance of the European discount markets, the combination of balances to be kept and transactions to be made with the United Reserve Bank in order to maintain these balances would give it a certain restrictive and regulative power, the possibility of which Professor Sprague denies.

From the practical viewpoint there can be no doubt whatever that the basis for a healthy control by a central bank must exist in a country where regular seasonal requirements cause,

with almost absolute regularity, acute increased demands for money and accommodation. A country of this kind will require at given periods certain additional accommodation to avoid stringencies as now experienced by us from time to time, and will stand without disturbance the withdrawal of the additional funds after the seasonal demand has subsided. Because our present currency system is expansive only, and lacks the power of contraction, we experience the difficulty of meeting unusual demands whenever they arise. Why should we assume, on the one hand, that the best men to be found, when placed at the head of such an institution, would be unable to cope with the problem, and at the same time be ready to place the burden on the shoulders of the managers of the six largest Wall Street banks,—the very men whom Professor Sprague accuses of having proved entirely unable to meet the needs of the hour in 1907?

The same argument holds good with respect to the treasury funds. While denying, on the one hand, the ability of the central-bank management to deal with the large funds of the treasury in the guarded and safe way in which a United Reserve Bank disposes of such funds, Professor Sprague is evidently willing to let the secretary of the treasury continue as heretofore to dispense his favors as well as he can.

As to the wisdom of allowing the United Reserve Bank to issue "unsecured notes," the writer believes that under the plan here outlined it is not probable that for many years to come unsecured notes will be issued to any considerable amount, if at all. But it appeared advisable to endow the United Reserve Bank with this privilege, so as to imbue the country with the fullest confidence that cash will always be forthcoming. This confidence will be the very means of rendering unnecessary a large issue of unsecured notes.

It is impossible to reply to every single point enumerated by Professor Sprague. I have therefore singled out these fundamental arguments that needed refutation. But, in closing, let us touch upon one more point raised by Professor Sprague. It is evident that one of the functions of the United Reserve Bank would be to accumulate, in easy times, large amounts of foreign

bills of exchange to hold them as a gold reserve against emergencies. Professor Sprague believes that this would create anxiety in Europe. An accumulation of foreign bills of exchange would, indeed, give fair warning to the European central government banks that in case of a stringency arising with us they must be prepared to meet a sudden demand from the United States. But the foreign government banks would vastly prefer this danger, which amounts to nothing more or less than the perfectly legitimate collection of debts incurred by their own countries, rather than be subject to the violent attacks to which all Europe is now exposed when a panic is raging with us. There can be no doubt that the unwelcome presentation of a bill payable to the United States, but instrumental in avoiding a panic in the United States, would be much more satisfactory to Europe than a general suspension of payment with all the consequent terrors at home and abroad.

It is a rather amusing coincidence that in this controversy the rôles have apparently been exchanged. One would expect that the professor's and lawyer's point of view would be that nothing can be sound in practice which is unsound in theory, while the banker's attitude might be expected to express itself rather in an attempt at patching up existing conditions by practical measures without much concern about the theory. The banker's view in this case is summed up by asserting unequivocally that no monetary reform will be sound and effective which neglects the theory of centralized reserves and fluidity of credit.<sup>1</sup>

#### IV

Some critics have raised the objection that a bank as here outlined would not earn its dividends. There cannot be any doubt that the United Reserve Bank will without difficulty earn a return on its capital in excess of 4 per cent per annum. But

<sup>1</sup> Just as this essay is going to press, Professor Sprague has begun the publication of a new series of contributions in the *Quarterly Journal of Economics*, vol. xxiv, no. 2. He has here somewhat modified his recommendations, but before dealing with them, it will be necessary to await the appearance of the further chapters which are announced. What has been said of Mr. Morawetz, at the end of page 328, however, applies equally to Professor Sprague.

we should bear in mind that this question of earning power is of very minor importance. If we want a bank which is not to be run for profit, but for the general weal; if we want to cede to the United States any profit in excess of 4 per cent net; and if, at the same time, we want the stockholders to be satisfied with a 4-per-cent investment, we should be fully justified in proposing that the United States guarantee a return of 4 per cent to the stockholders. Or, to express it in a happier way, it might be suggested that in consideration of the profits to be turned over to the United States by the United Reserve Bank and in consideration of the savings to be made by the United States in transferring the various disbursing and collecting functions from the treasury to the United Reserve Bank, the government of the United States should contribute to the running expenses of the United Reserve Bank such lump sum as will enable it to pay to its stockholders a dividend of 4 per cent per annum. It is safe to expect that, once established, the United Reserve Bank will become a permanent source of revenue to the government, and that important savings in its present budget will be effected.

One more word in closing. The thought is general, with people who have not studied the question, that a central bank is a step towards monopoly. The reverse is the truth. Wherever a central bank exists, it is the backbone of the independent institutions in their fight against the overpowering influence of the large stock banks, as they exist in England, France and Germany. It should be clearly understood that the United Reserve Bank, by creating safe conditions, would make the small banks independent, where they now have to rely, and are dependent, on the goodwill of their big sisters or the often doubtful ability of the secretary of the treasury to help. A central-reserve bank properly organized is not an oligarchic but a democratic institution; it would mean safety for all, hardship for none.

There is no good reason why the existing banks should oppose it. Wherever a central bank has been established the vested interests at first tried to prevent its creation. They saw only the danger of a change in business conditions which, though

bad in general, had been profitable to them. They recognized only later that by the change they were enabled to transact their business in safety and that therefore they could do a much larger business. There is not one of these countries, in which opposition ran high against a central bank, where today a move to do away with the central-bank system would meet with the slightest support. Neither the socialist nor the capitalist would dispense with it; it has become one of the fundamental parts of the economic life of modern nations, like the telegraph or the railroad.

Would it be repugnant to the so-called American spirit? Is it an un-American institution? Our opinion is that it is a slur and a slander upon the American people to say that they are morally or politically so utterly unfit that they cannot afford to adopt a system for which Russia, Japan, the Balkan States, and some of our South American sister republics, have proved adequately prepared and which even China is seriously thinking of establishing in the near future. We believe that the people will wake up to the humiliation of present conditions and that they will demand in no uncertain voice a thorough modernization of our system. We are inclined to think that ignorance about what a central bank would really mean has been more responsible for the popular antagonism to such a system than has the ghost of Andrew Jackson. Good American citizens, who lived two generations nearer than we do to the dissolution of the last Bank of the United States, and were more familiar with its history than are the people of today, did not consider it an un-American institution. In this respect Abraham Lincoln's first political speech, which he delivered at New Salem in 1832, may be of interest. He said:

*"Friends and Fellow-Citizens:*

"I am plain Abe Lincoln. I have consented to become a candidate for the legislature. My political principles are like the old woman's dance—short and sweet. I believe in a United States Bank; I believe in a protective tariff; I believe in a system of internal improvements, and I am against human slavery. If on that platform you can give me your suffrages, I shall be much obliged. If not, no harm done, and I remain respectfully yours,

"ABE LINCOLN."

It is seventy-seven years ago that this simple man from the woods, with his never-failing instinct, laid down this remarkable program, of which only one single part, "a United States Bank", remains to be carried out. Let us hope that it will be the pride of our generation to have achieved this step in the onward march of the United States.



## THE BANKING AND CURRENCY PROBLEM AND ITS SOLUTION

BY VICTOR MORAWETZ

### DEFECTS OF THE EXISTING SYSTEM

THE banking and currency system of the United States is radically defective for the following reasons:

1. In the United States there is no power to control the expansion of bank credits in the aggregate in relation to bank reserves in the aggregate, or to control and regulate the issue of bank notes, and there is no way of securing the adoption of a common policy by the various banks and trust companies when concerted action is necessary for the security of the general credit situation. There are more than twenty thousand independent banks and trust companies, each carrying on a banking business for its individual interest alone, independently of the others. Each of them is managed solely with a view to its own profit and at all times seeks to lend its credit to the limit permitted by its own safety or by the reserve requirements prescribed by law. The result is that credits are expanded, speculation is encouraged and business operations are extended to the utmost limit in normal times, and no provision is made for those times when an exceptional amount of currency is withdrawn from the bank reserves for use in circulation, or when there is a demand for an exceptional amount of bank credit. The rope of credit having been stretched in normal times to the limit of its strength breaks when an exceptional strain is put upon it.

Many of the banks seek to make provision for strengthening their position in times of need by keeping a substantial part of their resources in the form of deposits with other banks or in the form of call loans. But when a bank strengthens its own reserve by drawing upon its deposit with another bank, it must weaken to the same extent the reserve of this other bank; and when a bank strengthens its reserve by calling a loan, the result is merely to shift the loan to other banks, though a high rate of

interest may be exacted. Even if the borrower cannot obtain accommodation from other banks and must sell his collateral, the purchaser has to draw upon the banks to pay the purchase money. Therefore, though deposits of banks with other banks and call loans against good stock-exchange collateral may enable a bank to strengthen its reserve in normal times, they are not a means of preventing the occurrence of a general money stringency and they add no strength to the general credit situation when such a stringency arises.

2. No adequate provision is made for concentrating the reserve money of the several banks so as to render it available wherever most needed in times of financial stress. Under the national banking act the country banks may keep part of their reserves in the form of deposits with the reserve-city banks, and the reserve-city banks may keep part of their reserves in the form of deposits with the central-reserve-city banks. Under the various state laws, the trust companies and state banks also may keep their reserves, or part of them, in the form of deposits with the banks in the reserve cities and central-reserve cities. In practice a large part of the reserve money of the banks is held by the central-reserve-city banks in New York. This system wholly fails to accomplish the desired result, because the reserve money is scattered among many separate banks, each of which habitually expands its loans and its deposit liabilities and carries on a general banking business, without due regard to its responsibilities as a depository of the reserves of other banks. Consequently, in case of a general money stringency, the banks in the reserve cities and central-reserve cities are not prepared for the withdrawal of large amounts of their reserve money by depositing banks, and often there ensues a scramble among the banks for the available reserve money, each bank seeking to improve its own condition at the expense of the others. Sometimes this results in a general suspension of cash payments by the banks, though the aggregate amount of reserve money then held by them, if properly distributed and used, would be ample to supply all the circulating currency required by the community, and also to furnish adequate reserves for all the banks.

3. Owing in large part to the absence of any large bank or banks, prepared at all times, and upon reasonable terms, to rediscount commercial paper held by other banks and to buy commercial bills accepted by other banks or by private bankers, neither the system of commercial credits prevailing in other countries nor the custom of rediscounting commercial paper held by banks and banking institutions has grown up in the United States. Consequently, commercial paper, in great measure, is a fixed investment until paid, and a bank cannot in time of need increase its available reserve by selling commercial paper to other banks. This is one of the causes of the prevailing practice of keeping a substantial part of the resources of the large banks in the form of call loans and of investments in salable bonds. If, when there is a money stringency, the banks could readily sell their commercial paper, they would keep less of their resources in the form of call loans and investments in securities, and the amount of bank credit available for the legitimate commercial business of the country would be largely increased.

In normal times, or when money is easy, the banks usually would wish to retain their investments in commercial paper. An assured market for their paper would be of importance to them only in times of stringency in the money market. But, as all the banks in the United States habitually expand their credits as much as possible, each bank in times of money stringency needs all its resources to meet the requirements of its own customers and, as a rule, no bank is willing and able to help other banks by rediscounting paper upon reasonable terms. Therefore, in order to obtain the principal advantage of the foreign system of commercial credits and of the custom of rediscounting commercial paper, it would be necessary to establish in the United States a large bank, or several large banks, ready and able, in all conditions of the money market and upon reasonable terms, to rediscount commercial paper bearing the endorsement of other banks and to buy commercial bills accepted by other banks or by private bankers.

4. In the United States the issue of bank notes is not regulated according to any banking principle. The issue of bank

notes against the deposit of government bonds is governed, not by the need of the country for additional currency, but by the price of government bonds and by the ability of the banks to make a small profit through the issue of the notes. The power to issue bank notes under the Aldrich-Vreeland act does not serve as a means of controlling and regulating the expansion of bank credits or the international flow of gold available as reserve money, or as a means of preventing money stringencies. At best it can be used only as a means of preventing a financial catastrophe after a severe money stringency has arisen and after the business interests of the country have suffered serious injury.

Bank notes may properly be issued for the purpose of furnishing a form of currency that can be transported and preserved more conveniently than gold coin; but in this event the notes should be issued only against the deposit of a like amount of gold for their redemption, as in case of Bank of England notes and United States gold certificates. The issue of bank notes under these conditions is merely a measure of convenience and has no effect upon the volume of the currency, or upon the reserves and the credit power of the banks. In the United States the issue of bank notes for this purpose is not needed, as United States gold certificates can be obtained whenever desired against the deposit of gold.

In the United States the only justifiable ground for the issue of bank notes is to prevent fluctuations in the reserves and in the credit power of the banks resulting from periodical fluctuations in the amount of currency used in circulation, and to control and regulate the expansion of bank credits in the aggregate and the international flow of gold. When there is a demand for additional currency for use as a circulating medium, the issue of bank notes may serve as a means of preventing the withdrawal of reserve money from the banks, with the consequent large contraction of their credit power. The subsequent redemption of the notes, when the need for the additional currency has ceased, may prevent the accumulation of currency in the banks, resulting in excessively low interest rates, and may check an undue expansion of bank credits or the export of gold which may soon be needed again. A contraction of the volume of out-

standing bank notes may serve also as a means of causing higher interest rates and a contraction of bank credits, and as a means of inducing the importation of gold when needed for the safety of the general credit situation. The issue and redemption of bank notes may thus be used as a means of protecting, controlling and regulating credit conditions throughout the country.

But, unless used sparingly and wisely, the power to issue bank notes may produce grave evils. The amount of gold needed as bank reserves and as a circulating medium tends automatically and by force of the laws of trade to flow into the country in exchange for commodities and securities, or by way of loans. The use of bank notes instead of gold as a circulating medium tends to check this natural flow of gold. If bank notes should be issued or should be kept outstanding when an increase of the currency in circulation is not needed, the effect would be to drive an equivalent amount of lawful money out of circulation into the bank reserves, and to produce very low interest rates, which, in turn, would tend to cause an inflation of bank credits and the export of gold until the reserves held by the banks and their credit power had been adjusted according to the demand for bank credit. To the extent that notes were substituted for gold in circulation, the power thereafter, by means of the issue of bank notes, to protect the bank reserves and to control and regulate credit conditions would be used up and would no longer be available when needed. The ease of the money market resulting from the issue of the notes would be only temporary, and the ultimate result would be to weaken the foundation of the whole structure of credits throughout the country. If a very large part of the currency in circulation should consist of bank notes, the withdrawal of a considerable amount of gold from the banks for export, in consequence of the fear of a war or other cause might compel the banks to default in the payment of their notes upon demand, and because of the large amount of silver and government notes in circulation might imperil even the maintenance of the gold standard of value. For these reasons the issue of bank notes for the profit of the banks or as a means of furnishing a market for government bonds is wholly unjustifiable. The issue of additional bank notes, as a



measure of national economy, to save the use of gold as a circulating medium, would be equally unjustifiable and might prove a dangerous expedient. The United States is the richest country in the world, and it can afford to use in its currency relatively as much gold and as little paper as any other country in order to insure the safety and stability of financial conditions. But, although in the United States financial conditions are less stable than in England, Germany and France, the volume of uncovered paper currency now outstanding is larger than in any of those countries, per capita of population as well as in proportion to the volume of gold in the currency. It would not be prudent to diminish still further the proportion of gold in our currency in order to save the use of a comparatively small amount of gold as a circulating medium.

#### THE CENTRAL BANK PLAN

In every important commercial country except the United States the machinery for securing the necessary control and regulation of the expansion of bank credits in the aggregate and for keeping an adequate amount of currency and of credit power available for use in times of need has been provided by establishing a central bank which is charged with the responsibility and the duty of protecting financial conditions throughout the country. The necessary power is vested in the central bank: (1) by making it the common depositary of a large part of the reserves of the other banks; (2) by making it the sole depositary of government moneys; and (3) by conferring upon it a monopoly of the right to issue circulating notes.

The required regulation is effected by one or both of the following methods: (1) By acting as a bank for the discount and rediscount of commercial paper and by raising or lowering its discount rate, and sometimes, when interest rates are excessively low, by borrowing in the open market, the central bank to a certain extent regulates interest rates and the expansion of bank credits, and influences the flow of gold to or from the country. (2) By issuing its notes, which serve as circulating currency in lieu of gold, the central bank prevents the withdrawal of gold from the bank reserves for use as circulating cur-



rency, with the consequent reduction of credit power; and by diminishing the volume of the outstanding notes it checks over-expansion of bank credits and the export of gold when this should be prevented. The central banks of Germany and France use both these methods of regulating banking conditions in their respective countries. The Bank of England uses only the first method, namely, changing its discount rate and occasionally borrowing and locking up surplus bank credit; but this method alone has not proved always adequate in England and probably it would not prove adequate in the United States.

There are eminent bankers and statesmen who hold that we should establish in the United States a great central bank invested with powers similar to those exercised by foreign central banks. In the opinion of the writer, the establishment of such a bank would be impracticable and would be subject to grave objections for the following reasons:

The creation of a central bank involves something more than the concentration of the reserve money of the several banks in a common depository subject only to the order of the depositing banks. The mere custody of the reserve money by a central depository would accomplish no useful purpose. The purpose and the effect of concentrating the reserves in a central bank is to vest in the central bank a large amount of credit power based on the reserve money so obtained, and to enable the management of the bank to use this credit power, in its discretion, for the purpose of controlling, regulating and protecting credit conditions throughout the country. Concentration of bank reserves in a central bank with power to use these reserves to stop bank panics has been compared to concentration of the water supply of a city in a central reservoir under control of a proper fire department prepared to check a conflagration wherever it may break out; and it has been suggested that the American practise of letting each bank keep its separate reserve in its own vault is as ineffectual and as foolish as to let each householder keep his own share of the water supply of a city instead of combining the entire supply in a central reservoir. Although the illustration may be striking, it should not be overlooked that the analogy is imperfect. The reserves of

a central bank are not held merely as a means of stopping bank panics. They are held for banking purposes and they confer upon the central bank an enormous financial power. It is designed that the financial power so obtained shall be used by the management of the bank as a means of controlling and regulating interest rates and the expansion of bank credits throughout the country and in various sections of the country.

The territorial expanse of the United States is as great as that of all the countries of Europe combined. In Europe each country has its own central bank, but no one country of Europe can be compared with the whole of the United States. The business interests and financial resources of the United States are not centralized and cannot be centralized to the same extent as the business interests and financial resources of a single country of Europe. Only a central bank for the whole of Europe would furnish a fitting precedent for a central bank for the whole of the United States. Business conditions in the different sections of the United States vary widely, and there exists a strong and growing sectional feeling of opposition to the concentration of financial power in few hands or in any section of the country. Yet, inasmuch as New York is the principal financial center of the country, the principal sphere of activity of a central bank necessarily would be in New York and often in Wall Street, even though its nominal head office should be located elsewhere.

Though a central bank should be limited to dealings with other banks, its management would often be called upon to meet demands due to sectional self-interest and would often be subjected to unjust criticism due to the ignorance or prejudice of those unable to understand the complicated and difficult problems of finance. At times the south might want the bank to use its resources as a means of helping the planters to carry their crops of cotton and tobacco so as to force higher prices. The west might call upon the bank to use its resources to enable the farmers to carry their stocks of wheat and corn. The large money centers might call upon the bank to ease the money market so as to enable bankers and brokers to carry stocks and bonds when speculation runs high at the stock ex-

changes. In every period of financial stringency and of high interest rates, whether sectional or general, it is likely that urgent demands would be made upon the managers of the central bank to relieve the situation by helping to expand bank credits still further. Sometimes it might be necessary to yield to such demands in order to prevent the occurrence of far-reaching financial troubles, but often the further expansion of credits would be wholly unsafe and it would be necessary to refuse the aid of the bank.

The prevailing rate of interest in some sections of the country is substantially higher than in others. Would the central bank establish a uniform rate of discount for all sections, or would its rate of discount in some sections be higher than in others? Either course would be subject to serious objections and would be likely to result in sectional feeling.

Under the central-bank system the safety and stability of all the banks in the country would depend upon the central bank and a suspension of the central bank would precipitate a financial catastrophe greater than any that ever has afflicted the country. It is obvious, therefore, that a central bank subject to political influences and disturbances would not secure the safety and stability of financial conditions but would be a menace. In view of the sectional questions with which a central bank would have to deal and in view of our political history and our political methods, is it reasonable to expect that the management and policy of such a bank would be kept out of politics? From the beginning of our government to the present day banking and currency problems have been treated as fit subjects of party politics. The first bank and the second bank of the United States both resulted in bitter political controversies. After the war, the greenback question was treated as a political question and the issue of irredeemable fiat money was approved by popular vote in a number of the states. A long and bitter political fight was waged in favor of the proposal to pay our government bonds in irredeemable paper currency. For twenty-five years the silver question was treated as a question of party politics, and twice the free coinage of silver became the dominant issue of a presidential campaign. In our

last presidential campaign the principal issue advanced by one of our candidates was the compulsory guaranty of bank deposits.

A central bank would not prove a safe and useful institution in the United States unless its management could always be kept in the hands of experienced and able men free from political influences and ambitions and enjoying the confidence of the people in all sections of the country. The problem of securing such a management has not been solved. It has been suggested that some of the directors should be elected by the shareholders of the bank, or by the national banks throughout the country, that some of them should be appointed by the government, and that the board should be made up of representatives of different sections of the country; but such a composite board probably would suit no one and surely would not prove efficient. A great bank must have a homogeneous board of directors who can adopt a consistent policy, and the practical management of the bank must be left to its executive head. The creation of a composite board consisting of representatives of diverse interests would not remove the diversity of interests and would not produce a compromise policy satisfactory to all. Control would pass to such of the different interests as might combine to form a majority and appoint the executive head of the bank.

The central banks of Europe became useful institutions because they were in harmony with the social conditions, the business habits and the political methods of the countries in which they were established. In European countries there does not exist the feeling of opposition to the centralization of financial power that exists in the United States, and in no country of Europe are banking and currency problems deemed fit subjects for party politics. The administration of a central bank in the United States would probably become the source of endless sectional differences and dissensions and would soon become a political issue. Though a central bank in the United States might be created by an act of congress, no act of congress could create the business conditions, the customs and the political methods and traditions which in foreign countries have made central banks safe and serviceable institutions.

## DIVISIONAL RESERVE BANK PLAN

The objections to the creation of a single central bank for the whole of the United States would not apply to the creation of banks in different sections of the country, to act as sectional depositories of bank reserves and, in a measure, to perform the functions of sectional central banks. Such sectional concentration of bank reserves and sectional centralization of banking power would be both practicable and desirable. Even if it were proposed ultimately to establish a single central bank, it would be sound policy to proceed gradually instead of endeavoring to establish the central-bank system at a single stroke. By reason of the great expanse of the country and the diversity of business conditions in the different sections of the country, the details of the business of a central bank could not be managed at a central office. It would be necessary to establish branches in the various sections of the country and to delegate to the managers of these branches a large measure of discretionary power, the management at the central office exercising only general supervision and control. Centralization of power in the bank would thus be accompanied by a measure of decentralization in its management necessitated by the practical conditions existing in the United States. In the opinion of the writer, it would be advisable to commence with the creation of divisional reserve banks and to let these divisional banks form a central association to control and regulate certain matters of common interest. If, ultimately, it should be found practicable and desirable to establish a single central bank, the several divisional banks could be made its branches. The following plan is suggested:

Suitable geographical divisions should be prescribed by law for the purpose of establishing divisional reserve banks. The national banks in each division should be required to form a divisional reserve bank, each of the several banks becoming a shareholder and contributing a prescribed per cent of its own capital to the capital of the divisional reserve bank. The shares in the divisional reserve banks should not be transferable, but, upon the dissolution of a national bank, its share in the capital of the divisional reserve bank of which it is a member should be repaid to it.



Each national bank should be permitted to keep its reserve either in its own vault or as a deposit in any of the divisional reserve banks, and no deposit in any bank other than a divisional reserve bank, should be counted as part of the reserve of a national bank. Probably it would be advisable to permit the divisional reserve banks to allow interest on the deposits of other banks, but the association to be formed by the divisional reserve banks should have power to fix the maximum rates of interest that may be allowed on such deposits and to prescribe uniform terms and conditions to be observed by all the divisional reserve banks.

The divisional reserve banks should always keep ample reserves of lawful money and they should be permitted to invest their resources only in short-time commercial paper bearing the endorsement or acceptance of one of their constituent members, or of an approved bank or banking institution and generally they should be managed in such manner as to enable them at all times to furnish currency or credit to their constituent members by paying checks drawn upon their several deposit accounts, or by rediscounting good commercial paper bearing their endorsement or acceptance.

The several divisional reserve banks should form a central association with power to prescribe uniform rules and regulations for the conduct of their business, and the association also should have power to make such arrangements as may be found expedient for the purpose of facilitating exchanges between the different sections of the country. In the election of officers of the association each individual reserve bank should be entitled to cast a number of votes proportionate to its capital.

In order to place financial conditions in the United States upon a sound basis, it is necessary to stop any increase of the present inelastic issue of national-bank notes and to substitute for at least a part of these notes an issue of notes that can be contracted or enlarged from time to time in accordance with the requirements of financial conditions throughout the country. The power from time to time to control and to regulate the volume of outstanding bank notes should be vested in the association of divisional reserve banks, in conjunction with the secretary of the treasury.



For the purpose of providing an elastic issue of bank notes, subject to intelligent regulation and control, the association formed by the divisional reserve banks should be authorized (subject to conditions and within limitations to be prescribed by law) to deliver to each divisional reserve bank, upon its application, circulating notes of this bank, bearing the guaranty of the association, upon deposit with the association, as a redemption fund for their payment, of a sum of lawful money equal to a prescribed per cent of the notes. The notes should be payable by the issuing bank at the office of the association or at any of the divisional reserve banks, suitable arrangements being made, by rules of the association, for the reimbursement, with costs of exchange, of any divisional reserve bank redeeming the notes of another bank. The redemption fund of the issuing bank would be applicable to such reimbursement.

The association, with the approval of the secretary of the treasury, should have power from time to time to increase or to reduce the prescribed percentage of the redemption funds to be deposited and kept up by the several banks for their outstanding notes. By increasing the required percentage of the note-redemption funds, the uncovered amount of the notes and the aggregate volume of the outstanding currency could be diminished. By reducing the required percentage, the volume of the available currency would be increased and the banks would be enabled, without diminishing their reserves, to meet a demand for more circulating currency. The association, acting in conjunction with the secretary of the treasury, could thus control and regulate interest rates and the expansion of bank credits and could influence the international flow of gold available as bank reserves.

Each divisional reserve bank should be required at all times to maintain at the prescribed percentage its redemption fund for the payment of its outstanding notes, and the notes should be made a first charge upon the assets of the issuing bank. In addition, they would be secured by the guaranty of the other divisional reserve banks. A safety fund should be created by requiring each bank to pay semi-annually a small charge based upon the average amount of notes it has outstanding. The

several divisional reserve banks would incur practically no risk by reason of their guaranty of the notes of the other banks, and the notes would be as safe as any bank notes in the world.

Each divisional reserve bank should be required to pay quarterly a tax computed according to the average amount of notes it had outstanding in excess of the average amount of lawful money in its note-redemption fund. In other words, the tax should be computed on such part of the notes as is not covered by a deposit of lawful money and is based on the credit of the banks. It is suggested that the tax be at the rate of  $2\frac{1}{2}$  per cent per annum upon this amount.

By authorizing the national banks to issue circulating notes against United States two-per-cent bonds and by practically guaranteeing payment of the notes, the United States obtained an artificial price for its two-per-cent bonds. To take away the present right to issue bank notes against these bonds would greatly impair their value and would be unjust to the bondholders, unless due compensation were made. As the proposed tax on the notes of the divisional reserve banks would be two per cent per annum higher than the tax on the present bond-secured notes, the United States, without incurring any loss could preserve the value of its two-per cent bonds by agreeing to pay a higher rate of interest on these bonds when liberated by the conversion of bond-secured notes into divisional reserve-bank notes. It is suggested, therefore, that, as a measure of justice and as an inducement to secure the conversion of the bond-secured notes into individual reserve-bank notes, the government should agree that upon the issue of the divisional reserve-bank notes it will pay three-quarters of one per cent additional interest on such of the two-per-cent bonds as shall not be held by the government as security for bond-secured notes. United States bonds hereafter issued should not be made the basis for the issue of bank notes. The United States should not sacrifice the stability and safety of financial conditions in order to obtain an artificial price for its bonds, but, like other nations, should sell its bonds on their merit as investments.

In a volume entitled "*The Banking and Currency Problem in the United States*," published in 1909, the writer suggested the

formation of divisional reserve banks as above outlined and described in detail a plan for the formation of a note-issue association by all the national banks. On further consideration, it appears to the writer that it would be a better plan to allow only the divisional reserve banks to form a note-issue association and to issue notes, the divisional reserve banks thus being enabled in the regular course of the banking business to furnish currency to the several banks as required. Many of the provisions of the plan described in the volume above referred to would apply equally to the plan now proposed.

## THE NECESSITY FOR A CENTRAL BANK<sup>1</sup>

GEORGE E. ROBERTS

Director of the Mint

**T**HERE is no great difficulty in locating the weakness of our banking system. Like every advanced country, we do our business very largely by the means of bank credits, and, notwithstanding the abundant resources of the country, notwithstanding the ample assets of the banks themselves, we have no means of supporting these bank credits in times of strain, or even giving them the elasticity required to meet the ordinary fluctuations of business.

According to the last report of the comptroller of the currency we had at the time it was compiled \$14,000,000,000 of individual deposits in the banks of the United States and only about \$1,400,000,000 of cash in the banks, or about one dollar in cash for each ten dollars of practically demand liabilities. And this ought to be cash enough. This margin of 10 % is as much capital as needs to be tied up in reserves. The trouble is that it is not used to the best advantage.

This fund of cash is so divided and scattered that all confidence in its effective use is lost and its value for the support of our credits is frittered away. It is as though an army appointed to defend a city should be divided up with a certain number of men on each block, without organization or common commanders, each squad unable to give support elsewhere. When a crisis threatens, the system pulls apart and breaks down by its own efforts for self-protection, and that just at the time when it should be a source of strength and support to the business community.

It is useless in planning for the future to expect that the average banker will materially change the policy upon which he

<sup>1</sup> An address delivered at the anniversary dinner of the Academy of Political Science, November 11, 1910.

conducts his business. There are over twenty thousand independent banking institutions in this country, and competition fixes within narrow limits the conditions under which the business must be carried on. Competition is so keen, the banks pay so much interest on deposits, and do business under such a burden of expenses that they are practically compelled to keep their funds closely employed. There is no adequate reserve free to take care of exceptional demands or even to care for the ordinary seasonal fluctuations. We need more money and more bank credit in the last three months of each year than in any other season, but no one who is in this competitive circle can afford to keep capital idle for nine months in order to use it the other three, particularly if he is paying interest on it. It is because of this narrow margin of reserves that money so easily becomes uncomfortably tight. When the banks of the central-reserve cities have an average reserve of 26 % money is easy, and when it gets down to 24½ % money is tight.

We are just closing a year of much anxiety over banking conditions. Last spring it was reported that the banks were badly over-loaned and much apprehension was felt as to how they would come through the fall. And yet the difference between their cash reserves last spring and the spring before was a very small percentage of their liabilities.

The final banking reserve of the national system is held by the three central-reserve cities, which are required by law to carry cash reserves of 25 %. Their figures for the spring statements of 1909 and 1910 were as follows:

	1909	1910
New York . . . . .	25.68	25.76
Chicago . . . . .	26.16	23.35
St. Louis . . . . .	25.44	22.36

The cash reserves of the reserve-city banks and country banks did not vary in greater proportions.

In the last ten calendar years, including 1910, there have been 49 officially-published statements of the condition of national banks. There were but 14 statements in which the central-reserve banks averaged above 26 % and only six in which the

average was above 27 %. It was pointed out last spring with some alarm that the loans and discounts of the national banking system were higher than they had ever been before, but the fact is that there have been but five published statements in the last ten years which do not show the loans and discounts higher than they had ever been before. They are up to the limit practically all the time. We never have any surplus reserves worth mentioning. We never have any considerable margin of unused bank credit. Come what may, we never have any important reduction of the volume of loans. Under all the stress of panic in 1907 and the depression of business that followed, the national banks as a whole succeeded in reducing their loans only about 5 %. There was considerable shifting of loans among the banks, but not much reduction in the aggregate.

The truth is that in practise our bankers have only a very limited control over the volume of their loans. They find themselves obliged to take care of their responsible customers whose accounts are desirable or see them go elsewhere, and with this country developing and business expanding, as is always the case, their loans keep up close to their available resources. It is not the fault of the individual bankers; it is inevitable under the system; it is in the lack of a central reserve fund outside the competitive circle. In other countries the responsibility of carrying adequate reserves is definitely fixed upon a great central organization and it is given special powers to deal with the task.

Fortunately, we have in the United States a great store of gold that may be used to create a fund of credit. On the first day of this month the United States treasury held \$900,000,000 against the same amount of gold certificates. This is the greatest and the most ineffective gold reserve in the world. I invite your attention to the difference between the usefulness of this reserve and the next largest in the world, that of the Bank of France. Both are acquired in the same way. When gold is imported into France it goes into the bank in exchange for its notes; when gold is imported or produced in the United States it goes into the treasury in exchange for certificates. The public everywhere prefers paper to coin and an institution



that is given the sole power to issue notes against gold becomes the natural custodian of the country's stock of gold. The notes of the Bank of France come very near to being gold certificates. 70 % of the outstanding circulation of the Bank of France is covered by gold, and over 80 % is covered by gold and silver. But although the note circulation of the bank varies but little from the metallic stock, the fact that it is flexible and adaptable to the needs of the country for currency, enables that metallic stock to afford complete protection to the entire credit system of France. On the other hand the fact that our gold certificates are simply warehouse receipts prevents our \$900,000,000 from being used as a central fund for credit at all.

We have this store of gold, and upon it can be built an institution as powerful for the protection of American credit as the Bank of France has been for the protection of French credit. To accomplish this end the gold must be removed from the treasury to the possession of a responsible organization over which the government and the banking system of the country have joint control. Let the notes of such an institution be made good for all the purposes for which gold certificates are now good, and be put into circulation in exchange and substitution for gold certificates. This will bring the new institution into possession of the treasury certificates, and as they are received they may be presented for redemption. By this process the gold reserve of \$900,000,000 will be transferred from the treasury to the new organization. With \$900,000,000 of gold in its vaults and \$900,000,000 of notes outstanding it will be able in its discretion to issue say \$450,000,000 of additional notes and still have a reserve of 67 %, and the ability to do this will afford ample protection to the banking and business situation in this country. In short, the transfer of ownership and control from the thousands of scattered holders of gold certificates to one representative, responsible organization will endow this reserve, now inert and useless, with all the potency and effectiveness that have always belonged to the reserves of the Bank of France.

Such an institution, although analogous in some respects to the Bank of France, need not be like it in all respects. It need not receive deposits from individuals or even from banks. The

deposits of the Bank of France amount in all to only about \$140,000,000, including the government funds. The ability of the bank to protect the credit situation is not derived from its deposits, but from its stock of gold and its powers of note issue.

The main purpose with us in securing a central institution is to consolidate our gold reserve in responsible hands where it can be used to safeguard the entire banking situation. Another important function, however, would be that of serving as the fiscal agent of the treasury and handling the public funds. There is no responsibility that involves the secretary of the treasury in more annoyance and criticism than the arbitrary distribution of surplus revenues among the national banks. There is no feature of the situation that is more objectionable than this, and all the other plans for currency reform are defective in that they leave the relations of the treasury to the banks unchanged.

It not only is not necessary to have the central institution hold the reserves of the local banks over the country, but it is not desirable to have any such concentration of loanable funds. They have a more widespread and natural distribution now. It is not desirable to force any important displacement of funds or to disturb the relationships that now exist between the country banks and their city correspondents.

It is not necessary or desirable that the country banks desiring to rediscount paper should generally apply direct to the central bank. It would be better for them to get such accommodations from their regular city correspondents with whom they have daily interchange of business, to whom they are more intimately known and from whom they would perhaps be able to borrow under more flexible rules. The essential thing is that the several hundred banks of the reserve-city class shall always be able to get help when they need it. If they get it, competition will compel them to pass it on to their customers. These reserve-city banks will serve as channels through which the central reserve fund will be reached from all sections of the country.

It is not necessary to retire the outstanding bond-secured circulation of the national banks, although it would be desirable that government bonds in the future be placed on an investment

basis. There are serious objections to depriving the outstanding government bonds of the circulation privilege, and it would not be desirable to have to fill the vacuum that would be created by the retirement of \$700,000,000 of bank notes.

It is not necessary to retire the United States notes. The aggregate of these notes and silver certificates outstanding in denominations above ten dollars is now less than \$100,000,000 and steadily diminishing. The United States notes and silver dollars represent past mistakes; we would not provide for them if we were planning an ideal system, but they are no longer a menace to the treasury and need not be dealt with now.

It is unnecessary, in order to have a central note-issuing institution, to begin with an elaborate and complete organization. On the contrary, it would be a mistake to burden it with heavy expenses at first. It should be allowed time to develop its full functions and to articulate itself with the banking system by growth. The plan should be fundamentally sound, however, adaptable to expansion and to all the functions and responsibilities that may come to such an institution. It seems to me, therefore, that instead of being a mere advisory or administrative board, on the clearing-house plan, it should be a distinct and independent entity, able to do business on its own responsibility. A permanent institution that is to lend credit should have a paid-up capital of its own and accumulate a surplus beside, instead of doing business on the assessment plan, and certainly it is stating a primary truth to say that an institution which is to issue the paper currency of the country should have a gold reserve. I cannot conceive of such an institution playing its full part in the protection of the country's gold reserve and of the national credit without either capital or reserves of its own.

The central institution should be planned to unify and strengthen and supplement the existing banking system. While the government should have intimate supervisory relations to it, the active direction of its affairs should be in the hands of representative bankers from all sections of the country. One member from each of the thirty clearing houses leading in volume of clearings would give an admirable organization. There is no more reason to suppose that such a body, elected from all sec-

tions and drawn from both political parties, would become involved in partisan politics than there is to expect our clearing houses to become involved in politics. It is impossible, moreover, to believe that a body of men thus selected to serve in a representative capacity, personally identified with the localities from which they come and discharging their responsibilities under the scrutiny of the whole financial world, would permit the institution to be used to serve sectional and private ends. There is little in the history of such trusts, in this or other countries, to warrant such suspicion. Experience has shown that where responsibility can be definitely fixed and surrounded by full publicity, large powers may be safely granted.

There is little reason to apprehend that under such management the resources of the institution would ever be loaned to support stock-market operations, but that evil could be effectually guarded against by a proviso in the law that no part of the note issues should ever be based upon anything but gold and short-time commercial paper. An institution that could always be relied upon to take current commercial paper bearing well-rated names from the local banks of the country and give lawful money for it, would not only afford protection against panic but would enlarge the market for that class of paper and give greater mobility to our banking capital.

The objection that a central organization of this kind would create a centralized power and that this power might be abused is raised at every step in the higher organization of society. It is impossible to create any new powers, no matter how necessary or beneficial, without at least a theoretical possibility that those powers may be abused. But as population increases, as civilization develops, and as society becomes more interdependent, we are bound constantly to provide a higher and more complex organization. The beginnings of our political organization were in the old town meeting of New England, but whether we like all the performances of our state and national governments or not, it is certain that we cannot govern a nation like the United States with nothing but town meetings. Before we had any railways we had no need for an interstate commerce commission, a body to which we have now confided a very high degree

of centralized control. The whole problem of railway control is incidental to our industrial and social progress.

Finally, a system of thousands of scattered and unrelated banking institutions is unequal to the responsibilities which in a country of such vast industrial and commercial interests as ours are necessarily laid upon the banking system. A higher organization of our banking power is absolutely required and somehow it will be supplied. There are going to be great central banking institutions in this country whether we make special provision for them or not. The banking business is not going to stand still while development goes on in all other lines. Unification and organization will go on in the banking business as elsewhere; the question is, shall we recognize the tendency and the necessity for it, shall we shape its development, shall we supply the means to make it most effective and serviceable, shall we keep our hands on it and regulate it, or shall we permit it to develop without direction or control?

## HOW TO PREVENT CASH SUSPENSION BY BANKS<sup>1</sup>

ANDREW JAY FRAME

President of the Waukesha National Bank

**I**N 1873, 1893, and 1907 the banks of New York, the financial center of the United States, suspended cash payments for a considerable length of time, throwing labor out of employment and paralyzing general business. In European countries, on the other hand, general bank suspensions have been unknown for more than half a century. What is the cause of this striking difference? Europe has practically abolished the issue of currency by banks generally, except for one great central bank in each nation, while we have maintained 7,000 separate banks of issue, each undertaking to keep up its own cash reserve. The world's experience indicates clearly that for relief from our barbarous and intolerable banking and currency conditions we must look to the operations of a national reserve bank.

Let us compare briefly European and American conditions as they exist today. The progressive nations of Europe issue currency chiefly through great central banks, whose immense coin reserves make their notes practically gold certificates payable on demand. They are practically banks of issue and not of deposit. The problem of elasticity is solved by permitting the banks to put out relatively small uncovered issues upon conditions that insure their automatic retirement as soon as the extraordinary demand for money ceases. The following table gives approximately, in millions of dollars, the capital, circulation, deposits, specie holdings, and loans of the great European banks of issue:

<sup>1</sup>The substance of an address delivered before the Colorado Bankers' Association, contributed as a part of the discussion at the National Monetary Conference, Nov. 11, 1910.



	Capital	Circulation	Deposits	Total specie	Loans
Imperial Bank of Germany . . .	29	413	149	211	345
Bank of Austria-Hungary . . .	24	376	31	299	189
National Bank of Belgium . . .	10	136	16	24	124
National Bank of Bulgaria . . .	2	8	17	7	11
National Bank of Denmark . . .	7	34	1	27	13
Bank of Spain . . . . .	29	305	134	200	154
Bank of Finland . . . . .	2	18	4	5	11
Bank of France . . . . .	35	1,008	189	903	255
National Bank of Greece . . .	4	23	23	1	21
Bank of Italy . . . . .	29	213	90	152	91
Bank of Naples . . . . .	12	66	16	32	34
Bank of Sicily . . . . .	18	14	10	9	10
Bank of Norway . . . . .	3.5	21	1	8	12
Bank of the Netherlands . . .	8	113	2	57	59
Bank of Portugal . . . . .	15	74	29	13	26
National Bank of Roumania . .	5	43	.	15	25
Imperial Bank of Russia . . .	28	599	116	451	208
Bank of England . . . . .	71	146	280	187	156
National Bank of Servia . . .	1.1	6	1	4	2
Royal Bank of Sweden . . . .	12	52	12	20	37
Total, twenty banks . . . .	344.6	3,667	1,121	2,625	1,783

Comparing these European banks of issue with the national banks of issue in the United States, we get the following results, again expressed in millions of dollars:

	20 European Banks	7,007 U. S. National Banks
Deposits . . . . .	\$1,121	\$7,098
Circulation outstanding . . . .	3,667	667
Total demand liabilities . . .	\$4,788	\$7,765
Coin reserves held . . . . .	2,625	628
Percentage of reserves to demand liabilities . . . . .	54	8

Note that the great issuing banks of Europe hold 54 % of demand liabilities in coin, as against only 8 % in the United States.

Mark also the fact that the 2,525 millions of dollars in coin reserves of those banks will liquidate more than twice over the 1,121 millions of deposit liabilities, a large part of which are government deposits, while the balance consists of reserves of

the non-currency-issuing banks. Distrust of the great central banks in Europe is unknown, therefore the immense cash reserves are not called upon either to pay depositors or to redeem note issues. The cash reserves are used to relieve, in times of stress, the non-currency-issuing banks with small cash reserves and large deposit liabilities. Clearly, these central banks do not monopolize the general banking function as many suppose. The small number of outside banks now allowed to issue currency are unimportant. In each country one great issuing bank acts like the governor of an engine, expanding and contracting its issue automatically without engendering distrust, because it has immense coin reserves and quick assets. Even Japan and Switzerland have lately adopted the same method of relief. The great banks, with immense capital, great coin reserves and small deposit liabilities, easily expand currency issues to meet seasonal demands, and under panic conditions "discount freely to all solvent parties"; they also furnish extra cash to banks to meet the insane demands of frightened depositors, thus preventing the general paralysis of trade and industry so destructive to labor and capital alike which is inevitable if forced liquidation takes place, as occurred here in 1907.

If the United States in 1907 had had a large central bank of banks, I am firmly convinced that notwithstanding the colossal pyramid of credit which we had been building we might have been let down by easy stages, instead of falling off from the top of the structure with a jar that shook the whole commercial world. If, on the other hand, Congress had authorized national banks to issue uncovered credit currency as some have advocated, I am equally convinced that when the panic of 1907 struck us our troubles would simply have been doubled, for we should have entered upon the critical period with a credit inflation even greater than that which we actually did face. What is "uncovered currency"? It is currency issued by banks in excess of coin held on hand. For the past three years the uncovered currency of the three leading nations abroad has been as follows: Great Britain, \$125,000,000; France, \$125,000,000; Germany, \$200,000,000; total for the three, \$450,000,000. The uncovered currency of the United States of late years has

been double this total, or \$900,000,000. Our 700 millions of silver exceed the uncovered currency of the above three nations combined; as this great sum is over half fiat it ought to be counted as partly uncovered currency.

Such vast quantities of uncovered currency and semi-fiat money have undoubtedly added slightly to the burden of high prices in the United States. They mean inflation without corresponding contraction. The world's gold production of the past thirty years has exceeded that of the previous four hundred; this is doubtless another contributory cause. In my judgment, our wonderful energy and prosperity, coupled with the great underlying law of supply and demand, is the principal cause of high prices, but currency inflation is accessory thereto. Let us therefore eliminate currency inflation by adopting the European method of concentrating reserves and note-issuing powers.

If we examine the foreign investments and trade of the four countries mentioned above, a further interesting comparison emerges. It is estimated that the people of Great Britain have invested abroad \$15,000,000,000; France, \$7,500,000,000; Germany, \$5,000,000,000. On the other hand our foreign debts probably exceed our investments abroad. The latest annual trade statistics show, in millions of dollars:

	Imports	Exports
Great Britain . . . . .	2,887	1,836
France . . . . .	1,176	1,017
Germany . . . . .	1,980	1,607
Total for the three . . . . .	6,043	4,460
United States (1909) . . . . .	1,312	1,663

It will be seen from the foregoing that with such vast sums due to Great Britain, France and Germany on investments abroad, the raising of interest rates in any one of them automatically relieves shortage of funds in that nation, because investments abroad that are continually falling due are called in, instead of being renewed. Also, as bills of lading attached to time drafts on foreign imports and exports aggregating over 10,500 millions of dollars per annum or approximately 900

millions per month, are sought by banks all over Europe, these bills immediately move to the market where the rate for money is lowest, and thus funds flow freely from the easy money markets of Europe to the tight ones. The raising and lowering of interest rates thus automatically relieves pressure in Europe in normal periods, and the central banks issue extra currency in times of extraordinary demand.

The United States is not now a creditor nation, although she has made strides in that direction during the past twenty years. Our foreign trade is only 3,000 millions of dollars per annum, which in comparison with the European countries named, affords but partial relief on documentary bills of lading. The Aldrich-Vreeland bill, though perhaps of material value to us in times of crisis, does not satisfy the demands for seasonal currency. All these are reasons why the United States should have a national reserve bank as a preventive of trouble. Europe has attained elasticity by an evolutionary process, without producing distrust or inflation. Let us adopt the good features of her system and reject the bad ones. Centralized reserves and note issue we need; to branch banking I am unalterably opposed.

As an alternative to a central bank, some eminent writers advocate a zone system of note issue, controlled by boards in various sections of the country. I fear that they have not carefully considered the great cost of maintenance, nor the fact that the operation of such a system is not automatic. Is there not fear also that it would be the forerunner of a general branch-banking system?

Professor O. M. W. Sprague, of Harvard University, in a series of articles in the *Quarterly Journal of Economics* (1909-1910), points out a method of attaining elasticity and avoiding cash suspension in the United States. He believes that banks should pay no interest on deposits by other banks, and that they should at all times hold larger cash reserves than at present in order to meet extra demands in abnormal periods. Though agreeing with the major part of Professor Sprague's able argument, I am forced to disagree with him on both these points. However desirable it might be to prevent the banks from paying interest on bankers' balances, the experience of a half-century has proved it impossible.

In the second place, the banks of Great Britain, France and Germany, excluding the central banks of issue, hold less than half the cash reserves held here. Why increase the idle capital to be held for 10 or 20 years waiting to be used for perhaps three months when panic threatens?

The report of the comptroller of the currency for 1909 gives the cash held by all the banks in the United States (in fact largely in the reserve cities) as about \$1,450,000,000. 50 % increase would add \$725,000,000; \$725,000,000 idle capital at 5 % means a loss per annum of \$36,250,000. For 20 years it would mean \$725,000,000. This is a pretty penny to pay for a cure that would probably fail to work when panic threatened because at such a time each bank, just as it does now, would hold tenaciously to its cash; self-preservation is the first law of nature.

Such a plan would impound cash that ought to be in use, and it would be a great hardship to the stockholders. Besides, in obtaining the extra gold we should disturb the world's financial equilibrium.

If concentrated cash reserves enabled European banks to help us in 1907 with \$100,000,000 of gold, when every student knows that general bank reserves there were much less than here, why should we stand continuous heavy losses on increased scattered reserves? Why import vast sums of gold, instead of consolidating part of our reserves into a central reserve bank? Such a bank by increasing its circulation temporarily can aid any section of the country in the day of trouble, without loss or material cost to any interest. It thus avoids the large expense of foreign transfers, which seriously unsettle the world's exchanges, and it also obviates the calamitous results of suspension of cash payments. A bank of issue like the Imperial Bank of Germany avoids useless lock-up of cash and automatically expands and contracts its issues to meet emergencies whenever and wherever they arise. This is not theory. It is demonstrated fact. While we were floundering in the slough of despond in 1907, though Germany was in a no less expanded condition as to credit than we were, yet the extraordinary issues of the great Imperial Bank, carrying a 5 % tax, were generously

loaned to solvent parties at high rates of interest, and thus relief was brought to German business interests, which did not suffer the collapse that followed in the United States.

Why not adopt the method proved by the world's experience to be the best? Branch banking we should reject as entirely unnecessary and unsuited to our conditions. What we need is a national reserve bank, and I submit the following tentative suggestions for its organization.

1. Capital. Not less than \$100,000,000.

2. Ownership. To popularize the measure, receive voluntary subscriptions from national and state banks in sums of not less than 5 % or more than 10 % of the capital of each. Any stock not taken voluntarily by banks, should be offered to the public, but in no case should any bank or individual acquire or hold more than one one-thousandth part of the entire stock, or less if thought best, in order to prevent monopolistic control. The government ought not to contribute, because without such contribution political interference would be practically eliminated.

3. Management. There should be a board of twenty-five directors, without pay, except expenses and \$10 to \$25 a day for attending quarterly or semi-annual meetings. Six directors should go out each year, making the term of service four years. The secretary of the treasury should be the twenty-fifth director.

4. Business. If it is thought best not to abolish the present United States treasury system (probably an impolitic thing to attempt to do) then all surplus funds of the government in excess of normal daily requirements might be deposited in the national reserve bank. The banks of the three central-reserve cities might also deposit part of their required cash reserves. All should be counted as reserves just as under the present law, but no interest should be paid on deposits of any nature, thus practically eliminating competition with existing banks. The bank should have the right to issue \$100,000,000 of untaxed notes, any excess to pay 5 % on conditions similar to the Imperial Bank of Germany.

5. Loans. Existing banking privileges should not be disturbed. I see no reason why the reserve bank should not purchase and hold its full capital and surplus, also part of its



untaxed currency issues in United States, county or city bonds, such as are permissible under the New York and Massachusetts savings-bank law. Generous reserves should be held against deposits and the balance loaned on quickly-convertible paper. No loans should be made on stocks as collateral, thus giving no aid to stock gambling. As for elasticity, the untaxed currency could be used to move the crops and the taxed to meet abnormal pressure. If the reserve bank made extra loans to relieve pressure, their repayment in reserve-bank or other notes would effectively and automatically impound excessive issues without any expensive redemption machinery whatever, thus preventing inflation and its concomitant evil, the exportation of gold in accordance with Gresham's law.

6. Limitation of earnings. A surplus fund should be gradually accumulated up to 20 % of the capital, and semi-annual dividends declared. One-half of the excess over 4 % dividends should be paid into the United States treasury, until 5 % or 6 % was paid to stockholders; thereafter all excess profits should be covered into the United States treasury. Such government profits might be in lieu of any taxation upon the bank. These conditions would insure dividends and government profits from the start.

Such a reserve bank ought to be confined to dealings with banks alone. No branches are needed. If we had had such a bank in 1907, solvent banks in New York having ample collateral could have obtained cash through discounts at the bank of issue. If so, such notices as "No cash will be paid on balances," would not have been flashed to the country. The simple philosophy of "You got 'em, I no want 'em," would have applied and general suspension would have been avoided. What we need is a reservoir from which to quench the conflagration in its incipency. We want a bank, not to monopolize the necessary banking function or enter into competition with our splendid independent banking system, but to be our servant in time of trouble, to prevent cash suspensions with their paralyzing train of evils.

It is objected that "all banks would be compelled to rediscount their paper with the national reserve bank." The Wau-

kesha National Bank has had no occasion to rediscount for over thirty years, except in panic periods to prevent cash suspension. Even in 1907 it paid cash on all demands. The 14,000 millions of dollars on deposit in the banks of the United States today are evidence that surplus capital is abundant, and that most banks need small rediscounts under normal conditions. As conclusive proof, in 1907 the loans, discounts, bonds, and other like assets held by all the banks of the country aggregated about 16,000 millions of dollars. The total rediscounts and money borrowed by all the banks approximated about 150 millions of dollars, or less than 1 % of the total, notwithstanding the fact that most of the central-reserve-city banks offered such accommodations to their country correspondents.

In the new west and south, where surplus capital is not abundant and crops are largely confined to one staple, some banks need assistance in the fall to move the crops, but in the greater part of the country, where crops are diversified and surplus capital predominates, bankers rarely know when crops move, the cry to the contrary notwithstanding. There would be no fear of the central bank monopolizing country or city bank balances, because it is conceded that the central bank would not be allowed to pay any interest on balances, and thus the existing conditions between country and city banks, the latter paying 2 % on balances, would be voluntarily maintained.

Lastly, some people honestly fear monopolization, and they cite the old United States Bank, which met its doom in 1836, as an example. So far as I know, all advocates of a central bank are opposed to an institution similar to the old United States Bank, which had branches in nearly all the large cities of the country and threatened to monopolize the general banking function of taking deposits and making loans, as well as that of issuing currency. That bank was justifiably legislated out of existence. The kind of bank now suggested is one acting only as a safety valve, limited in its general banking function, but principally acting as servant to our splendid independent banking system, and not as its master, a bank to assist other banks in moving crops, if necessary, and to prevent solvent banks from cash suspension in time of panic. With practical limitations, monopolization would be unprofitable and practically impossible.

Solvent farmers, merchants or manufacturers with ample assets continually find ready assistance at the banks, that bills due may be promptly honored and high credit maintained. The bank is their reservoir in the day of trouble. Why should not all solvent banks, national, state and others, with portfolios filled with good assets, have some reservoir where cash could be had quickly when distrust threatens, when reserves are limited, and when frightened people are clamoring for their deposits? Why should the banks not be in a position to loan to all solvent parties, that payrolls be not discontinued or the wheels of commerce stilled? Why should the banks in Milwaukee, Chicago and New York, which in 1907 held \$300,000 of the reserves of the bank of which I have the honor to be president, be denied the privilege of such a reservoir of cash, that our reasonable cash requirements be promptly met? Why should we be floundering about under general cash suspensions, as in 1907, at a cost of thousands of millions of dollars to labor and capital alike, when relief could be had through a national reserve bank?

I am confident that such a bank could be chartered free from political or monopolistic control. It would prevent cash suspensions, prevent high interest rates, prevent hoarding of cash at all times. It would work quietly and automatically, whereas relief through clearing houses has a tendency to breed distrust through exciting general public comment. Is it not wise to adopt that method which is simple, direct and automatic in its action, and which is approved by the experience of nearly all the progressive countries of the world?

## PRINCIPLES THAT MUST UNDERLIE MONETARY REFORM IN THE UNITED STATES<sup>1</sup>

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**P**ANICS are acute infections of the body economic by the germ distrust. Varying causes may bring about a crisis, which always precedes a panic, but the degeneration of a crisis into a panic is invariably an epidemic of distrust.

Every modern financial system is built on confidence, on credit. Our whole financial structure has become a system of clearings of credit, a system of substituting the token of confidence for the payment in actual cash.

Against the immense amount of demand obligations payable by rights in cash at the option of the payee there is only a comparatively small amount of actual gold. The very moment that a general hesitation sets in to accept this clearing by credit, the very moment that a simultaneous request begins, calling for actual cash in payment of all demand cash obligations, a general collapse becomes inevitable. A modern system must be so constructed that a demand for cash caused by distrust shall be absolutely impossible, or the system is not safe, and the mere knowledge of its being unsafe will precipitate a panic whenever an acute crisis arises.

If a small fire starts in an old-fashioned wooden theater a catastrophe is unavoidable. The mere fact that everybody knows that he is in a fire trap and that the combustion will spread rapidly, brings about a panic with all its horrors of unnecessary loss of life and property. In a modern fireproof building the fire will be quickly extinguished: there will be less food for the flames, there will be a possibility of fighting them, and the feeling of safety will allow everyone to save himself

<sup>1</sup> A paper presented at the meeting of the Academy of Political Science, November 12, 1910.

without trampling his neighbor to death or blocking those who also want to escape. It is a critical situation, a crisis, which, thanks to modern construction and wise precaution, does not degenerate into a panic.

Why has our building proved a fire trap and why is Europe's structure safe? Why does Europe's system guarantee the avoidance of panics and why does ours inevitably insure their recurrence from time to time? It is from this point of view that all the material published by the National Monetary Commission ought to be studied and it is from this point of view that the final question of monetary reform must be approached.

Let us then lay down as the first principle which must guide all our further investigations, that no system which is by universal acknowledgment theoretically defective will ever stand the strain of an acute crisis without that crisis degenerating into a panic. It is of no avail to patch up a theoretically wrong system and to strengthen it by some practical measures which give a false assurance of safety. When the storm comes, fear and doubt will begin to creep in through the loophole which logic, then wide awake, will drill, and once well-founded distrust begins, the system loses its basis, which is confidence, and must collapse. Not every measure that is right in theory is good in practise; but what is wrong in theory can never be right in practise.

Let us lay down then the second fundamental principle, that a financial system which scatters and decentralizes reserves, making them unavailable and insufficient in case of need, is fundamentally wrong and defective.

In a modern system, constructed on credit, cash must be centralized as far as possible into one big reservoir, from which everyone legitimately entitled to it may withdraw it at will and into which it must automatically return whenever it is not actually used.

In order to achieve this there must be two guaranties: one, that the central reservoir is safe and strong enough to supply all the cash that may be required from it, so that nobody will hesitate to let it become practically the sole trustee of all cash; and the second, that every bank depositing its cash or allowing

it to stream into the central reservoir will be sure to have the means at its command with which to acquire the cash that it may legitimately have to demand.

In order that cash should always return into the central reservoir, cash must become less valuable than the interest-bearing right to command cash, which is embodied in a legitimate bill of exchange. To keep large supplies of explosives under our roof is a source of danger; the safer a community the less is the necessity for us to be provided with ammunition. It is the same with large cash holdings.

Individuals, corporations and banks alike in a modern household must try to reduce the holdings of cash to a minimum, because cash holding entails the risk of loss and robbery and because a hundred dollars carried in the pocket for a year, or needlessly hoarded, means a loss of four dollars. Instead of accumulating cash, the desire must prevail to dispose of it as quickly as possible and to turn it into cash credits or interest-bearing quick assets.

This leads to a clear division of the functions of the central reservoir and of the general banks. It is the function and duty of the general banks to act as the custodians of the people's money and deposits and to employ the same in conformity with the principle that a bank must not give any other credit than it receives, which means that against all demand deposits it must be able to provide at all times payment by cash credit. It is the function and duty of the central organ: first, to watch that the right proportion be maintained between all demand cash obligations of the country and the actual cash at its disposal; second, to guarantee that every legitimate cash credit can be transformed at will into actual cash; and third, to establish so firm a confidence in its ability to perform these duties that cash will never be withdrawn to be hoarded, but will always return promptly into the central reservoir, leaving in the hands of the banks and the public only the amounts absorbed by actual circulation or taken for gold exports by creditor nations.

From these different functions of the central banks and the general banks, there follow as a logical consequence the different elements necessarily inherent in their reserves. The central



bank, having cash obligations, must have the strongest possible reserve of cash and quick assets payable within a short time. The general banks, having obligations payable only in cash credit, need have reserves only in cash credit and in quick assets, convertible at all times into cash credit.

The channel that connects these two systems and enables them both to perform their functions in safety is the central bank's discount rate. The discount rate enables the general banks to build up a cash credit with the central bank, by rediscounting with it legitimate paper, and to draw actual cash against this cash credit, if necessary. It thus renders the maintenance of a large holding of actual cash unnecessary for the banks. An increase in the discount rate enables the central bank, on the other hand, to protect itself by collecting a larger proportion of its maturing bills discounted, decreasing at the same time the amount of new purchases of paper, and incidentally attracting foreign money or warding off gold exports. While cash payments continue without hesitation, the increased rate brings about a general contraction which will result in a safe ratio between the actual cash holdings of the nation and the grand total of its cash obligations.

The less actual cash is required in the process of paying debts and settling balances, the more developed is the system. This applies not only to the transactions within each city, but much more so to the settlements and payments between cities. Whenever a central bank opens a branch in a city, it means that from that day a bank of that community can deposit with that branch a given sum of money, and request that the amount be transferred to the credit of any other bank having an account with the head office, or any other branch of the central bank. This means that a great clearing system will come into existence all over the country, and that cash remittances for account of the general banks will cease to exist between places where there are central-bank branches.

We have repeatedly dealt at length with the folly of a system which makes the commercial paper purchased by a bank immovable assets, locking up the capital of the purchaser, and which forces the banks to consider as their only quick assets

cash in their vaults which they must not use, and call loans on the stock exchange which during a panic they cannot turn into cash.

We may then stop here for a moment and establish four general principles, as I would like to term them, which follow from our discussion up to this point:

I. Cash reserves must be centralized into one strong organization where they will be available when needed, and where they will command such confidence that they will not be withdrawn except for actual circulation or gold exports.

II. In order to secure the free return of cash into the central reservoir, there must be some means of exchange between the central reservoir and the banks, so that banks may rely on their ability to build up with the central reservoir a credit balance against which they may draw cash if necessary. This medium of exchange must be commercial paper (under safeguards to be discussed later on).

III. Fluidity of credit must be our final aim. A sound financial system must mobilize its commercial paper and make it a quick asset instead of a lock-up. Mobilized commercial paper, instead of bonds and loans on stock-exchange collateral, must finally become the most important basis of our financial structure. The larger reservoir must regulate the smaller one; not *vice versa*, as with us. Discounts in the main liquidate themselves within a comparatively short period, and by the natural process of consumption. Bonds, which are investments of long maturity, are not self-liquidating, but they and stock-exchange loans, which represent undigested securities, must be finally absorbed by the process of investment of the savings of the nation. This is at best a slow process, in which only comparatively few persons participate subsequently to the initial process of general consumption by all. Therefore no nation enjoying a modern financial system bases it primarily on bonds and stock-exchange loans.

IV. Clearings must not stop within the limits of a single city. Remittances of cash at cross purposes between cities are even more wasteful than within a city, for the loss of interest is so much heavier and the danger of cash withdrawals from one

city to another is so much greater in critical times. The central reservoir must act as an inter-city clearing house, as it does in Europe.

Here we have the four main general principles, to which, a little later, we shall have to add two more, concerning note issue. These four principles are so self-evident and so absolutely essential that once we recognize them clearly the work to be done by us in reforming our monetary system ceases to be bewildering and complicated. Our compass is set and the only question that remains is whether we can avoid the cliffs that endanger our course. To effect a centralization of reserves and a safe system of inter-city clearings ought not to frighten us as a problem offering insurmountable difficulties.

To the general principles governing every financial system we now add some principles which ought to be observed with reference to our peculiar conditions. These principles I should like to term the local principles. They are as follows:

1. The central reservoir must not be operated for profit. If it takes the form of a bank, as probably it must, the stock dividends must be limited to what would correspond to a fair investment basis. This moderate return might be guaranteed by the government, which in turn would receive the surplus earnings.

2. The central reservoir would have to be restricted in its operations. It should deal only with banks, bankers, and trust companies. Its main function should be to buy foreign exchange, which it should accumulate in times of ease as a gold reserve, and it should purchase commercial paper from banks and trust companies only.

The difficulty here is that we have as yet no standard discount paper such as exists in England, France and Germany, and that therefore, in order to avoid abuse, some system must be invented which will act as an effective control and which will supply an additional and safe guarantee. How this can be accomplished I have outlined in detail in an article entitled "A United Reserve Bank of the United States," which was published by the Academy for the Merchants Association of New York some six months ago and which forms a part of the

present volume. It would lead too far to go into details concerning the suggestions made in that essay. They are subject to modifications and were published only for the purpose of showing that it is possible without doubt to devise some scheme which, while strict enough to prevent any abuse, can still be made broad enough to allow of practical and effective operation.

3. The management of the central reservoir must be absolutely free from the dangers of control by politics and by private interests, singly or combined. This can be achieved without doubt by a combination of measures like the following: the stockholders would appoint only a minority of the directors; a small number of additional directors would be furnished *ex officio* by some political officers, but the majority could be appointed by groups of banks all over the country under a system, for instance, like that proposed in the above-named plan. These directors should elect and appoint the managing governor of the central organ, who would be chosen and engaged like any other bank president, without any political consideration, but with due regard to ability and character alone.

But safety would have to lie not only in this mode of election, but also and mainly in the limitation of the profits and in the restriction of the operations of the central organ. A stock offering a maximum return of 4 % combined with the restriction that the central reservoir may not do anything else but buy certain clearly circumscribed paper under the strictest guarantees and injunctions, cannot possibly involve any danger from monopolistic or political domination.

4. The treasury should cease to deal directly with the banks. The central reservoir should be the recipient of the government's surplus funds and should attend to the government's disbursements. The influence in business of the treasury, a purely political body, must cease.

5. Cash balances with the central reservoir or its branches must be considered and counted by the banks as cash in their own vaults. The central organ must have power to request the banks to keep with it cash balances proportionate to the amount of their deposits.<sup>1</sup> Thus every bank will be made to contribute

<sup>1</sup> "Banks" always means national banks, state banks and trust companies.

to the work of the central reservoir, of maintaining a safe proportion between all cash obligations of the nation and its actual cash, a work which, with the lack of a fully developed discount system, would otherwise remain much less effective. It is fortunate that existing circumstances allow such a measure—which is more far-reaching than similar arrangements in Europe—without adding any new burden to the banks which are in the habit of keeping these large cash reserves. The immense advantage to be gained, without any sacrifice made by the banks, will be, that the vast sums of cash accumulated in the central reservoir will be freely forthcoming when needed, and will insure safety, instead of being helplessly and hopelessly stored up by the individual banks.

6. The central organ must be in a position to contract for temporary loans of gold with other governments or foreign central banks, and to receive or give collateral therefor.

This clause is self-explanatory. The power that this measure would confer would go a long way toward allaying fear, and thereby strengthen and benefit the system, even if the privilege were never made use of.

We have thus far left entirely out of consideration the question of note issue. We have done this because the problem loses so much of its complexity and presents itself so much more clearly if the question of notes, which is only a side issue, is temporarily disregarded; and secondly, it is just because we wanted to show how comparatively unimportant this question of note issue really is, that we have endeavored to present the structure in its fundamental lines complete in itself without embodying note issue from the beginning.

To try to remedy the shortcomings of our present system by reorganizing only the note issue, as many reformers have done, is to attempt to repair a broken-down carriage by hitching to it a fresh horse. Effective centralization of reserves and the creation of fluidity of credit are the main questions. Elastic note issue is a side question, though a very important one.<sup>1</sup>

<sup>1</sup> A full argument concerning this point is embodied in the author's article, "A United Reserve Bank of the United States," to which reference is made. The writer apologizes for some unavoidable restatements contained in the present essay.



V. We may now enumerate our fifth general principle, which is this: Inasmuch as note issue, partly secured by gold, is only an auxiliary activity of the central reservoir, the note-issuing power ought to be centralized as far as possible in the central reservoir. For not only does this uncovered note issue give additional safety to the central reservoir, but there is inherent in it a certain regulative power which is lost and endangered by an excessive decentralized and scattered additional note issue. The point is plain: If notes issued by other banks must be paid by them in cash, these other banks would again become accumulators of cash and thus interfere with the free return flow of cash into the central reservoir. This would be a fundamental danger. If, on the other hand, they could rely on the central reservoir to redeem their notes in cash, they could work at cross purposes with the central reservoir, antagonize its restrictive policy, weaken its position, and still throw on it the entire burden of final cash regulation.

Bank notes are deposits on demand in bearer form, passing as cash. If we desire to authorize the issue of bank notes partly secured by bills purchased and only partly secured by gold—as there cannot be any doubt we should—the duty to make sure that this proportion remain within safe limits and that the notes always be met by actual cash must be left to the same organ that guarantees the prompt transformation of every cash token into actual cash.

VI. Furthermore, the function of making money and of issuing money are at times distinctly opposed, and the performance of these functions should lie in entirely separate bodies.

In developing these principles I am not unmindful of the fact that in Europe also there are countries where note issue is not entirely centralized. Changes in a monetary system have to be perfected with extreme care and patience, and everywhere it has been necessary to live through periods of compromise before finally reaching the coveted goal. In Germany, where there were thirty-two banks of issue, there are now only five, including the Reichsbank, which now, as a matter of fact, has become the all-important regulator. The other banks have been brought into a state of coördination where they have to coöperate in following the Reichsbank's lead.



We, too, shall have to be prepared for a period of compromise concerning note issue. We have before us a complex problem, inasmuch as there are at present in circulation too many inelastic and unsecured, or poorly-secured notes, like the national-bank notes, the greenbacks, and the silver notes. To convert at once any and all of them into the notes of the central organ would be too large an undertaking at this time. However, we may safely leave in circulation about half the amount now outstanding, to serve as the pocket money of the people, and begin by substituting the new elastic notes of the central organ for the other half. For elasticity means not only expansion, but also contraction. We must instil into our present system a sufficient amount of elastic notes—elastic because, being issued against bills purchased, they are withdrawn from circulation when the money paid for this paper at maturity is not reinvested in the purchase of other bills. If the bank cannot contract its notes in time of ease, it cannot expand as far as it should in times of stress. The principle ought therefore to be established that an ample portion of our present unsecured notes ought to be withdrawn and replaced by the notes of the central organ.

This, again, is not an impossible task. We have outlined in our previous plan how it could be accomplished by withdrawing the national-bank notes and leaving the greenbacks and silver notes in circulation.

We could well imagine another plan,<sup>1</sup> which is advocated also by Prof. Sprague of Harvard, in connection with suggestions now made by him for a modified form of a central bank. This plan would probably be more popular, though in my opinion not quite so sound. It is a scheme which would for the time being leave the national-bank notes and silver certificates undisturbed and provide for the redemption of the greenbacks. The government would deposit with the central organ the \$150,000,000 gold held against the 356 millions of greenbacks now outstanding. The central organ would assume these greenbacks and we would suggest that it receive in turn the privi-

<sup>1</sup> *Quarterly Journal of Economics*, Feb., Aug. and Nov., 1910.

lege of calling on the government in times of stress to pay for the remaining 200 millions, which the government would have the privilege of doing either by issuing to the central organ some short treasury bonds or by paying in cash. This would enable the bank in case of extreme demands to place the treasury bonds at home or abroad and break the pressure on its gold holdings. The surplus earnings of the central organ should be applied under this plan as a gradual redemption fund of the outstanding government bonds held by the national banks, and if, later on, it should be found necessary, the redemption of the government bonds in the hands of the banks might be accelerated by other means.

7. No matter what may happen, not one additional government bond must be issued, carrying with it the privilege of further note issue by the national banks. While the national banks, which acquired these bonds in the past, are entitled to full and fair protection as to their present holdings, this reckless inflation of our currency system, which even to-day is a severe obstacle to monetary reform, must not be allowed to increase and thereby further weaken our miserable system.

8. Automatic taxes governing scattered note issue cannot bring about a safe and practical regulation. Conditions vary; a drain from within has to be met in a different way from a drain coming from without. Demands originating in healthy periodical economic developments must be treated in a different way from demands caused by over-expansion and over-speculation. In a large country covering the most varying geographical, social, and economic conditions, one ironclad tax, applied without possible discrimination to all alike at the same time, will do harm in one corner while it does good in another.

The system must provide for the use of brains and for a wise power of discrimination, though the regulative power must be so strictly circumscribed that there can be no other motive but the general good in deciding upon the questions as they arise. The elimination of any possibility of gain, the restriction of the functions of the central organ and the composition of its board will guarantee this.

One word in closing. With a structure as defective as ours,

we cannot expect to develop at once an absolutely perfect new system. Monetary reform must try to perfect changes without violently upsetting existing conditions. The principles laid down here, and the details contained in my previous plan fully allow for this. The changes proposed leave the business of the banks and even their methods almost untouched. In order to do this, the so-called local principles must adapt themselves to conditions. However, there must not be the slightest compromise in two respects: The changes must err rather on the side of safety than on the side of immediate perfection and the fullest efficiency; and furthermore, they must contain nothing that is in contravention of those general principles which can be neglected only by endangering the whole structure.

Centralization of reserves, effective concentration of note issue, and fluidity of credit, strongly safeguarded, though thereby somewhat clumsy in the beginning, are the rules that must and can be observed. They are the only means of safely killing the germ distrust, or, to change the metaphor, of averting the ignominious struggle for life in a fire-trap. Unless we follow these lines we shall again see the sorry day when banks will trample each other to death in the mad attempt at saving themselves, till general suspension will put an end to this disgraceful scramble, marking in turn only the beginning of untold misery for the nation.

Slowly but surely it is becoming evident to the nation—and if the work of the Monetary Commission had accomplished nothing more, it would have done a great deal—that central banks are not oligarchic but democratic institutions, that central banks by creating safe conditions render the small banks independent of the dominion of the large institutions, and that in Europe the central banks are the backbone of the independent banks in their fight against the ever-growing branch-banking system.

A system of centralized reserves and decentralized banking power is clearly the one that this country requires, and it is my conviction that it will gladly accept it when once that system is clearly presented to it in definite form.

I have here avoided the name central bank, and have used



the name central reservoir, just as in my previous articles I have termed the institution a central reserve bank or a united reserve bank. This has not been done from cowardice, for the purpose of avoiding a name against which popular prejudice ran high. It has been done for the reason that, first of all, the name expresses what is to me the most important feature of the problem, namely, the centralization of reserves. The second reason is that we should not have, and what we suggest is not, a central bank. Wherever central banks exist, their powers are infinitely wider; they are real banks privileged to do almost a complete general banking business. The central organ, on the other hand, as here suggested, though securing to us the principal advantages of the central-bank system, is nothing but a central reservoir, precluded from doing a general banking business and invested only with such functions as it absolutely needs for its own protection and for the protection of the nation.

It has been a great privilege to be allowed to read this paper under the auspices of this academy and the commercial bodies uniting with it in this national conference and under the eyes of the members of the Monetary Commission. We wish the latter Godspeed. May success be with them and may they take up this momentous work without any further delay.

These years have been well employed in locating the evil and in clearly diagnosing the case. But now is the time to perform the operation, before the patient gets another relapse. Let us hope that this question, which is non-partisan—for as far as we remember we did not find that Republican faces looked any different from Democratic ones during the panic—will be solved on non-partisan lines and that new nationalism will bury the hatchet before the vastly more important question of new national-bankism.

## THE TRANSITION FROM EXISTING CONDITIONS TO CENTRAL BANKING<sup>1</sup>

BY CHARLES A. CONANT

*Author of A History of Modern Banks of Issue*

**I**N organizing upon a new basis the banking system of a country as large as the United States, the problem of transition from the old system to the new is almost as important as the soundness of the new system. This problem of transition,—its dislocations, its difficulties and its costs,—is one which is too much ignored by the theoretical economist, perhaps in tariff matters as well as in those of finance. A transition, however, which may affect the activities, earning power and future calculations of a generation or even of a decade, looms larger upon the horizon of the people of that generation or that decade than the remote benefits to be attained by their successors when the transition is completed.

Upon the subject of finance, fortunately, it is possible to reason with more precision, from both theory and experience, than in some other parts of the economic field. In this field, as in the field of physical research, there has been great progress in recent years. The experience of such countries as Austria-Hungary, Russia and Japan in replacing irredeemable paper by a gold currency; the great experiment in British India in giving a fixed gold value to hundreds of millions of silver, supported by similar tests upon a smaller scale in Mexico, Peru and the Philippines; the success of Mr. Lidderdale, the governor of the Bank of England, in preventing a panic in 1890 by the simple process of coöperation to sustain confidence,—all these and other important events have taught the farsighted man of finance how far he can go in handling with courage and resolution the edged tools of gold, confidence and credit to accomplish given results.

<sup>1</sup> A paper presented at the meeting of the Academy of Political Science, November 12, 1910.

In dealing with the problem of banking reform in America, we have to deal with a problem of great magnitude, but one in all other respects comparatively simple. We do not have to struggle with a depreciated currency, as we did in 1875, nor do we have to face the depressing problem of locked-up and impaired assets, as did Italy and the Argentine when they undertook the reorganization of their banking systems. We have, moreover, an influence constantly working in our favor, in solving ugly problems of government paper and inflated bank-note issues, in the steady growth of our population and productive power and hence in our power of absorbing currency.

In dealing with the methods by which the power of note issue should be transferred from the existing national banks, above 7,000 in number, to a central bank with adequate branches, it is possible only to touch upon a few of the salient problems which present themselves. Thus far, less attention has been given to these problems than to that of the structure and operation of the proposed central bank itself. It cannot be expected that within the brief space of this paper an ultimate solution of those problems in all their details will be found; nor is it to be assumed that the suggestions here made are necessarily the best and final solutions. I have no doubt, however, that a method of transition from the old system to the new can be found which will permit the inauguration and operation of the central bank without jar to credit and confidence and without impairment of the interests and profits of the existing banks. That it can be found has been shown by the recent experiences of Sweden and Switzerland, both of which have transferred the power of note issue from local banks to central institutions, while leaving to the local banks their old powers as banks of discount and deposit. All that can be done in this paper is to point out the more important factors to be dealt with in solving the problem in this country and suggesting the broad outlines of a solution. Among these essential problems to be considered the following may be set forth:

1. The disposition of the two-per-cent bonds.
2. The disposition of the existing national-bank notes.
3. The relation of the existing national banks and other banks to the central bank.



#### 4. The reorganization of the government currency.

I. The problem of the bonds is a serious one, but probably not so difficult as it appears, if it be attacked with a determined purpose to find a solution. The ultimate aim to be sought is to eliminate the bonds entirely from the banking business, except that perhaps a prescribed minimum might be left with the central bank as cover for the base line of its circulation, upon which the elastic element would be superimposed, adequately protected by gold. To retain bonds at all as a basis of bank circulation is not in accordance with scientific political economy, but dates back in practice to the organization of the Bank of England in 1694 and to its reorganization in 1844. Modern experience has shown that a certain amount of notes covered by assets not thoroughly liquid do comparatively little harm if they form only a moderate percentage of the total circulation and do not hamper the convertibility of the elastic element.

If the bonds were worth what the banks paid for them, they could be withdrawn by the banks as they surrendered their circulation and gradually distributed through the investment market. In the case of the 2 % bonds, however, which constitute cover for all but 6 % of the present bank circulation, value is derived largely from the use of bonds for this purpose. It would be necessary, therefore, in order to avoid heavy losses by the banks, to leave the bond-secured circulation untouched for a time or to provide that the bonds be taken over at par, or at some other fixed valuation, by an institution strong enough to carry them until maturity. If the latter course were decided upon, the function of carrying the bonds could probably be assumed by the central bank. It might be found advisable in any case to extend the process of substituting the notes of the central bank for those of the local banks over several years, and in the meantime outlets might be found for a part of the bonds by conversion or through other channels. If the central bank should assume liability for all the outstanding notes of national banks and should hold against them the bonds which the national banks now own, the notes would be protected by assets at least as flexible as under existing law and would have the

additional protection of the gold reserve of the bank and its great powers in the money market, derived from unity of resources and control.

A means of eliminating the bonds—or at least a large portion of them—within a comparatively short time, might be found in the postal savings system. There is little reason to doubt that this system will grow rapidly, once it has been fairly launched, and such a growth seems likely to occur several years before the central bank opens its doors for business. There may be a question whether the postal savings system in this country will so far supersede existing saving systems as to attain the rate of growth which has been reached in European countries. It is not unreasonable to believe, however, in view of the fact that savings deposits in the United States have grown during the past ten years at the rate of \$130,000,000 per year, that the postal savings banks will get their share of the increment of progress and will soon be in a position to absorb annually many millions of securities. In Prussia, with a population little more than one-third of ours, and probably with a considerably lower scale of productive efficiency per capita, the five years ending with 1906 witnessed an increase in deposits in the savings banks of some 2,500,000,000 marks, or about \$600,000,000. Figures like these indicate that if our postal savings system should prove at all attractive to the public, even in those parts of the country only which now lack efficient savings systems, the problem of getting rid of the bonds would be solved very soon after provision was made for their absorption by the people's savings.

In carrying out such a plan, there would be justification for a refunding operation which would correct the error of 1900 in seeking to float 2 % bonds at par, and would permit an interest rate to be paid which would give them a value near par as investments. If the secretary of the treasury were authorized to refund 2 % into 3 %, bonds only when they were presented by the postal savings bank, the teeth of criticism against an increase of the interest rate would be drawn by the fact that the toiling masses of the people were being put upon a level in the earning power of their small savings with the more fortunate investors in other securities.

II. The problem of getting rid of the existing national-bank notes is closely linked with that of eliminating the bonds from banking assets. There are several directions from which the problem of the notes might be approached. In some respects, the easiest path might be found along the precedent set by England in 1844 in careful respect for vested rights. If it were decreed that the national-bank circulation should stop where it is and that no bank in future should be permitted to take out an additional note, the field would at least be cleared for superimposing upon this dead weight the elastic element of issues by the central bank for future needs. If the principle of the English law were followed,—that whenever a bank liquidated, its power of issue should lapse,—there would be a steady downward movement of the old bond-based circulation while the upward movement of the total circulation due to expanding business was swelling the elastic element issued by the central bank.

The number of banks which have gone into voluntary liquidation since the organization of the national system has been 2,063, with gross capital of \$356,542,900. The capital of banks liquidating during the past eight or ten years has shown an average of about \$16,000,000 per year, which would be swelled by insolvencies to perhaps \$20,000,000. The elimination of the notes of such banks for a period of ten years would have a perceptible effect in reducing circulation. If there were added to this provision the extension of the rule which is already law, that banks must retire circulation based upon bonds which have reached maturity, there would be an accelerating rate in the withdrawal of the old circulation which would soon reduce it to a negligible factor. This policy would have the merit of leaving the 2 % bonds to be provided for at the leisure of the government and the banks. They might no longer be required as a basis for the fixed circulation of the national banks, but might be surrendered *pro rata* over a series of years as an outlet was afforded for them in the postal savings system. Such a plan would probably necessitate a bank-note guaranty fund for the protection of the surviving notes of the national banks, but the creation of such a fund and its administration by the central bank would afford ample assurance against distrust of the old notes.

This plan represents the extreme of conservatism. It would probably be wiser to adopt a plan somewhat more radical for withdrawing the note-issuing power from the national banks. The desired result might be accomplished in a short term of years, at the rate of a fixed amount per quarter, as in the case of the new charter of the Bank of Switzerland. The National Swiss Bank went into operation in the summer of 1907, and it was provided that the circulation of the local banks then outstanding should be got rid of in three years by the surrender of one-twelfth of the amount quarterly. Notes not presented for retirement were covered by deposits of lawful money, as under our existing national banking law.

Such a process of reduction would not be difficult or embarrassing to the national banks if a market had been created for the bonds, either through purchase by the central bank with its own notes or by their absorption into the postal savings system, as above set forth. The central bank would undoubtedly be prepared to aid the local banks by advances and rediscounts, as was provided for in the recent reorganization in both Switzerland and Sweden. In the case of Switzerland, the National Bank made advances on bonds and other securities to facilitate the retirement of the notes of the local banks. In Sweden there were more specific provisions for aiding the local banks, to which reference will be made in discussing their relation to the central bank.

It is obvious that the existing national banks would suffer no embarrassment or loss if they received the notes of the central bank in substitution for their own, except the interest on the United States bonds which they now hold against circulation. The profit from this source is so small, and would be offset by so many advantages in the relations of the local banks with the central bank, that the loss of it would not impair the earning power of the local banks. On the contrary, the essential purpose for which circulation is desired would be served better than under the present system by the ability of the local bank to obtain currency up to any reasonable amount during the seasons when it was most required, by the simple process of rediscounting its good securities at the central bank and its branches.

Instead of being limited by a rigid rule or by the fluctuations of the bond market in its ability to obtain notes, the local bank would be in a position to meet the requirements of its constituents up to the limit of the aggregate of its first-class bankable resources. There would be no currency panics to be feared; there would be no occasion for piling up idle reserves, drawn from reserve agents in New York or Chicago under the menace of a fear that, unless currency were hoarded, it could not be had.

III. The problem of the relation of the local banks to the central bank would soon solve itself. Enough has already been said to indicate that their relations, instead of being competitive, would be mutually helpful. The central bank, dowered with a power of note issue which would be limited only by its ability to maintain adequate gold reserves through its influence over the international market, would stand ready to aid the local banks to the limit of their legitimate needs. The local banks, at least during the period of transition, might be accorded some of the special privileges which were granted to them in Sweden, where a credit was opened in their favor against approved collateral at a rate 2 % below the published discount rate, and power was granted to obtain rediscounts at a rate not exceeding two-thirds of the published rate. Reserve requirements for the local banks might be made less onerous than at present, on condition that they kept the notes of the central bank in reserve vaults.

In putting into execution a more flexible system of credit than that which the country now possesses, it would be necessary to extend the practice of acceptances, which has been so ably presented to the country and to this academy in the papers of Mr. Paul M. Warburg. The adoption of this system would come about naturally when it appeared that the central bank would grant accommodation readily upon accepted paper and preferred to take it when it had partly matured rather than immediately after its creation. The gradual extension of the system of acceptances, especially in foreign trade, would give genuine convertibility to commercial assets which now too often represent a security acceptable only at the institution where it is first discounted. Foreign bills, moreover, would become an



available part of the real reserve of the central bank, because they would meet the demands for the export of capital or for gold resources at London, Paris or Berlin in times of pressure.

IV. It remains to refer briefly to the share which the central bank would be able to take in restoring to a modern basis our clumsy system of government currency. It would be a legitimate duty of the bank to assume the current redemption of the greenbacks. If the government should turn over to the bank its reserve of \$150,000,000 in gold, the bank would need no other asset against the \$346,000,000 in outstanding greenbacks except the liability of the government for their ultimate redemption. If the bank notes and the greenbacks were thus disposed of, it probably would not be necessary to provide for direct redemption of silver certificates in gold. They would float of themselves as a substratum of token money, representing a constantly diminishing ratio to the whole amount of currency in the country. In the case of the gold certificates, the government would hold the gold for their redemption until their retirement, but it would undoubtedly be wise to prohibit further issues, in order that the free gold of the country might gradually sift into the metallic reserve of the central bank as a guarantee for its outstanding notes. At first, no doubt, there would be a disposition among the old banks to discriminate in favor of gold certificates for their own reserves, but as they needed them from time to time for paying customs duties and for other large payments, the tendency of the outstanding total would be downward, and several hundred millions of the \$900,000,000 in gold held against them would become a part of the great mass of yellow metal which would contribute to the impregnable reserve of the central bank.

Such, in outline, appear to be the proper solutions of the leading problems of transition from our existing system of isolated banking units, fighting among themselves in times of panic, like the demoralized passengers of a sinking ship, to the system of coördination, unity of control, and mutual protection which would be involved in the operation of a central bank of issue.



## LESSONS FROM THE BANK OF ENGLAND<sup>1</sup>

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**I**N discussing the Bank of England it is necessary first to state the essential facts of its history. Until 1797 it was operated very much as the Bank of France has been during the last hundred years, issuing bank notes and accepting deposits practically without regulation and restriction. But in 1797, because England was losing gold under the influence of the expenditures made by the government abroad, the bank was restricted from redeeming its notes. Then began a chaotic period in English finance, very much like that which existed in this country from 1862 to 1878, a period of irredeemable paper money, the notes of the Bank of England constituting the standard of prices throughout the United Kingdom. The situation became so serious that finally, in 1810, the celebrated Bullion Committee rendered its report, attributing the premium on gold to the excessive issue of bank notes. The bankers and business men of England at that time, as a rule, were inclined to think that the premium on gold was due, not to any depreciation of bank notes, but to the machinations of a foreign enemy, to an unnatural increase in the demand for gold.

During that period, of course, the Bank of England note became a legal tender. Specie payments were resumed in 1821. Shortly thereafter joint-stock banks were organized which began to issue notes, using the Bank of England notes as their reserve, for they were still legal tender. Then began the development in England of a credit system superimposed upon another credit system. England suffered the same industrial and financial reverses in the '30's as this country and there was the same debate that we had with regard to the necessity for

<sup>1</sup> A paper presented at the meeting of the Academy of Political Science, Nov. 11, 1910.

properly securing the issue of bank notes and with regard to the danger to a country arising from an over-issue of bank notes. The so-called currency party, which advocated the idea that all bank notes should be based sovereign for sovereign upon gold, triumphed, and by the bank act of 1844, the Bank of England was deprived of its power to issue notes except in exchange for gold, with the exception of £13,000,000 already outstanding, which were covered by government securities. Since then the bank has taken over the issue of certain country banks, so that now this issue of notes not covered by gold amounts to about £18,500,000. It is unable to issue further notes except in exchange for gold, and that gold is not held in the reserve of its banking department, but is set on one side in a so-called issue department, where it is held in trust for the holders of the notes. Consequently a large part of the gold held by the Bank of England does not belong in any sense to the depositors or the general creditors of the bank, any more than the gold in the United States Treasury held as security for the gold certificates can be utilized in this country for the redemption of our greenbacks.

These are the fundamental facts leading up to the act of 1844, an act which is responsible for a great loss to England's trade and industry. Most Englishmen are opportunists in finance; they do not think things out in advance as do the French or the Germans, but wait until trouble is near and then do something to escape damage. Three years after the act of 1844 was passed, the panic of 1847 occurred, and it was necessary to suspend the bank act and permit the bank to issue notes without regard to the requirement that they should be issued only in exchange for gold. In other words, the banking department was permitted to obtain notes from the issue department by the deposit of securities. The same thing happened in 1857, and again in 1866. It might have happened since then had not a strong neighbor across the Channel come to the relief of the English money market in critical periods.

Prior to 1844, when the banks had freedom of issue, the English people employed bank notes in making exchanges very much as did the French and Germans, or as the French and

Germans do to-day. So did we at that time, but it was held prior to 1844 that the bank note contained something essentially dangerous and that an over-issue of notes would cause a crisis to arise and gold to be exported. It did not seem to occur to many of the disputants of the time, that deposits, or deposit credits, might be so developed that an over-issue of such credits would with equal suddenness or certainty cause a rise of prices and an expulsion of gold. That is something which has been learned since. The note credit is *per se* no more dangerous than the deposit credit, and the deposit credit is capable of a great deal more injury than the note because it is capable of much greater expansion, for there is a limit to the amount of paper money that we will carry or use, but there is apparently no limit to the amount of bank credit that we are willing to obtain and utilize through the medium of the check book.

Englishmen therefore began at once to develop the deposit credit and the use of the check book, until at the present time, if you will take the time to read the interesting interviews published by the National Monetary Commission,<sup>1</sup> interviews with the leading bankers of London, or to read the valuable monographs by Mr. Withers,<sup>2</sup> the financial editor of the London Times, and by Mr. Palgrave, you will discover that the practical bankers of England are almost a unit in the belief that the deposit currency which has been brought into existence since the act of 1844 was passed is wellnigh perfect, and that the English banking system as it exists today is the very best in the world. In the same interviews you will find very courteous but pointed criticisms of the French and German systems.

The act of 1844 compelled English finance from that time on to travel on its front legs, and as a result the hind legs shriveled and became unimportant, but the front legs developed

<sup>1</sup>*Interviews on the Banking & Currency Systems of England, France, Germany, Switzerland and Italy.* Washington, 1910. National Monetary Commission. (Senate doc. 405, 61st Cong., 2d sess.)

<sup>2</sup>*The English Banking System.* By H. Withers, R. H. I. Palgrave and others. Washington, 1910. National Monetary Commission. (Senate doc. 492, 61st Cong., 2d sess.)

tremendous muscles, and now if you go to England, and talk about the Bank of England and the English banking system, they will show you at once those gigantic front legs. No other country in the world has anything like them. Business is done everywhere by check, and check currency has vastly greater elasticity than have bank notes. The front legs have been developed, and they are getting along very well in a state of stable equilibrium. In the writings and interviews of the English bankers the fact that London has become the financial and commercial center of the world is attributed to the excellence of the English banking system. England's position as the world's financial center is in reality due entirely to the fact that on account of her geographical position and on account of the remarkable characteristics of her people, she was first of all the world's trade center, she became the world's workshop, the island from which goods were sent to all corners of the globe, and to which were sent payments from all quarters of the globe. That is the reason why London has become the financial center of the world.

Now, a word about the value and importance of the check credit as compared with the note credit. England has built up a gigantic structure of deposit credit or deposit currency. It is entirely without its natural protector, the bank note; for a bank deposit is simply the bank's promise to pay to the depositor, and it is utilized by the check. English banks encouraged the use of checks even to the extent of crossing them, so that no man receiving one could go to the bank and get cash, a crossed check being payable only through the clearing house, as we would say. But the deposit credit is taken care of. Naturally if the recipient of a check desires a medium of exchange which everybody will take without endorsement he finds it in the bank note. The note then naturally takes the place of the check if the bank can issue notes, as the Bank of England cannot, because its notes are practically note certificates. Hence the Bank of England and all the bankers, relying upon its stability, encourage the use of checks and discourage the use of that other instrument of exchange which people in all countries excepting England and the United States employ. If notes

cannot be issued, then the bankers will discourage the use of notes and encourage the transaction of business by check. This goes on very well until something causes a certain amount of gold to be drawn from the banks either for domestic use or on account of international indebtedness. Now, the Bank of England, being unable to use notes to protect its credit when its cash reserve is encroached upon, is obliged to raise the rate of discount. When its discount is raised, other banks in England raise their rate, and every merchant, every manufacturer, every man in England using capital, is obliged to pay a higher rate of interest than he would have been obliged to pay had not the bank been afraid that it would lose some of that precious reserve which constitutes the sole protection of the great mass of bank deposits and deposit currency in the United Kingdom. If the raising of the rate does not cause gold to flow into the bank's vaults or prevent it from being withdrawn, then the bank goes into the open market and borrows money. It borrows, not gold, but credit, in order that it may raise the market rate of interest by depleting the supply of loanable funds. By thus lowering the price of sterling bills, it induces foreigners to invest a little more heavily in such securities, in this way bringing about a flow of gold toward London. That is a remarkable thing for a bank to have to do, in the first place to raise artificially its rate of interest, at least once a year and often several times, either to keep gold from going out or to draw some more gold in from abroad, and then to go still further and bid up the rate of interest by borrowing in the open market.

I am glad to see that the Englishmen who treat of that subject, Mr. Withers and Mr. Palgrave, both deplore this necessity and both perceive clearly the fact that the necessity for such unnatural banking has been forced upon the Bank of England by the situation developed as a necessary result of the act of 1844.

Mr. Palgrave, for instance, on page 261 of his monograph entitled *The English Banking System*, published by the Monetary Commission, says, "It is true that for more than forty years the government has not had occasion to sanction any suspension of the Peel Act, but the price which has had to



be paid for this has been an extremely high one, and the adoption of the arrangements of the Act of 1844 cannot be recommended to any other country." It is evident to any business man or banker that if a bank is artificially holding the rate of interest higher than would be the normal rate on capital, or in other words is raising the rate merely to draw gold into its reserve or to prevent gold from being drawn out of its reserve, the borrowers of the country are subject to harmful fluctuations in their costs, to uncertainties which tend to discourage the development of trade and industry. According to the statistics published by the Monetary Commission in regard to the banking and industrial affairs of Great Britain, France and Germany, during the last ten years the Bank of England has changed its rate 107 times, and the rate has varied from 2 to 7 %. During the same time the Bank of France, operated in the same way as the Bank of England before the act of 1844, has changed its rate only thirteen times, and the rate has fluctuated between 2 and  $4\frac{1}{2}$  % instead of between 2 and 7 %. The Bank of Germany, which has a restriction upon note issues changed its rate 73 times during the same period, the rate varying from 3 to  $7\frac{1}{2}$  %. Sometimes the condition was good, and sometimes it was bad. But the Bank of France, from my point of view, appears to have given the industries of France a rate of interest corresponding very nearly to what the economists call the rate of interest on capital, not a rate of discount fluctuating on account of temporary apprehensions with regard to a banking reserve.

The Bank of England has made little growth in the last twenty years. Its deposits were no larger in 1909 than they were fourteen or fifteen years ago, though the average of recent years is a little higher. The growth of the bank is shown by these figures: Deposits in 1880, £33,000,000; in 1909, £54,000,000. Notes outstanding in 1880, £26,000,000; in 1909, £29,000,000. Total liabilities in 1880, £60,000,000; in 1909, £83,000,000. Its resources have increased but 39 % in thirty years. On account of losing its relative importance in the money market, the bank has had to borrow money frequently in order to make its rate effective, thus working injury



to English trade in order to protect its own reserve. It is obliged to do it by the law of 1844 and by the system which has grown up under that law. I assume that these changes in the Bank of England rate, these artificial interferences with the money market of London, affect the prices of all loans and discounts in the United Kingdom. The resulting loss I figure at not less than  $\frac{1}{2}$  of 1 % on their deposit currency, which would amount to at least \$35,000,000 per annum. I am inclined to think these figures too small. To say that England, for the maintenance of her present banking system, is unconsciously paying an annual tax of \$35,000,000, I certainly think is putting the estimate too low.

But the English system has also some good features from which we may learn a lesson. First of all is the fact that England has a centralized reserve. All of England's banking reserve lies in the vault of one institution. That institution is not permitted by law to make a business use of it, and hence has not been able to grow. There has been no increase in the number of the bank's branches, and practically none in the amount of its business in spite of the great development of banking and of business in England and in spite of the rise in prices which naturally would have increased the numerical size of the items. England's financial system has weathered the storms in the past because the reserve has been under the control of practical, intelligent men, and they have jealously guarded it. Without dreaming that they were doing it, however, they have been obliged to impose a heavy tax upon English industry and trade in order to preserve the stability of the system. They have been able to maintain that stability because the reserve of only \$150,000,000 was centralized and wisely managed. Even of this small reserve only a part was available for the protection of deposits, the rest being set aside and trusted for the note holders. Despite these facts the centralization of the reserve and the resulting confidence in the institution, hampered as it is, have made it possible for England to finance her great enterprises without serious disaster.

Another good feature of the English banking system is the fact that the law, excepting the bank act of 1844, does not

seriously hamper any of the banking institutions. The Bank of England increases its deposits, its capital and its surplus at will. The law is silent with regard to the reserve that it must carry as a protection for its depositors, and with regard to the amount of its surplus and that of other banks.

On the other hand there are a number of bad features of the system from which we may take lessons. The law fails to provide a proper degree of publicity, a thing which instead of hampering the banks would undoubtedly increase their strength. Though they know that very well themselves, the bankers are not eager for a change in the law. The statements of English banks are exceedingly unsatisfactory, when one wants to know exactly what the condition of the bank is. For instance, they have in England deposit accounts and current accounts, and there is no way of finding out what are deposits and what are current accounts. The banks lend money on collateral and also on discount bills, thus disposing of their customers' money in two entirely different ways. When a bank is lending money on collateral, as the Bank of England and all the joint-stock banks in London do, then that bank is doing something tantamount to the advancing of funds for permanent investment. It is assisting in the construction of a railroad or in the building of factories, and that, of course, is a disposition of bank funds which cannot be approved. Even bankers themselves do not generally understand that there is always danger when they lend money on collateral, that the money is going, not into trade and industry, but into a permanent fixed form from which its rescue may be difficult. There is no way of telling how much money is advanced by the English banks on collateral and how much on discounts.

There is still a third point. The Bank of England's gold reserve, as previously stated, is exceedingly small, only about \$150,000,000. If that reserve were \$300,000,000, the bank would not be so nervous as at present with regard to a slight exportation of gold. Granting that the bank act of 1844 is to continue in force—and I imagine that it will continue in force for an indefinite period—the English people, or perhaps their government, must take some steps to accumulate in London a larger

stock of gold. The Bank of England might do so without cost to itself if the law permitted it to issue one-pound notes. Now the lowest note is five pounds. If the bank could issue one and two-pound notes and simply hold the gold, gradually the English people would become accustomed to these one and two-pound notes, and the gold now in circulation would flow into the bank. There is no reason why it should be exported to France or to the United States. The Bank of England under the law would be expected to hold that gold, and so it would get into circulation a large quantity of paper which would never come back for redemption. Thus it might increase its reserve by possibly fifty or seventy-five million dollars in the course of the next few years, although this amount is a mere guess.

My final criticism is this, that the Bank of England has been able to withstand the period of critical years since 1866 only because the Bank of France and other European friends with their larger hoards have usually been able and willing to help. If anything happens—and we all hope it never will happen—that Great Britain should get into war with another great nation, and if the English people should begin to get alarmed about an invasion, I think that a great many people who hold English sterling bills or who have bank accounts in London would be considerably worried until they had realized on their bills, and drawn as much gold as possible out of London. If that situation should arise, with the English finances in their present very delicate and unstable condition, the result might be disastrous.

LESSONS SUGGESTED BY THE EXPERIENCE OF  
THE FRENCH PEOPLE AND OF THE  
BANK OF FRANCE

J. PEASE NORTON

WHEN I wrote in the *Yale Review* and *Moody's Magazine* in 1906 and 1907 concerning the need of a monetary commission I suggested that the important work of such a commission should embrace the following lines of research:

1. The collection of reliable information bearing upon these questions.
2. The recommendation of remedial legislation for the present extraordinary condition of affairs.
3. Coöperation with commissions of other countries; for the problems require international action for their solution.
4. Recommendations for a comprehensive reform of our entire monetary and currency systems.
5. Recommendations for a systemization of our credit system, and a national organization of the clearing houses of the country.<sup>1</sup>

I little dreamed that within three years all that I wished to know regarding the current systems of exchange as practised by the great nations, written by their own experts, would be available in the shape of the magnificent reports of the Monetary Commission.

In the history of money and banking, the work of Senator Aldrich will stand forever as an example of the way a congressional commission may work to present the evidence to the end that all experience may be gathered together for the present benefit of mankind. As I have glanced over each report of this series of monographs, replete with original data, statistics and careful generalizations, I have realized anew the possibilities

<sup>1</sup> See *Moody's Magazine*, "Necessity of a Gold Commission," Sept., 1907; and *Yale Review*, "Gold Depreciation," October, 1906.

of national progress through the use of commissions and experts. In the investigations of the Monetary Commission, Senator Aldrich has eclipsed his earlier brilliant researches contained in the Senate *Report on the Course of Wholesale Prices and Wages*, published nearly two decades ago.

Before students of the theory of money and banking as well as before all students of social progress, two ideals are clearly presented: social progress by reduction of waste in existing institutions; social progress by substitution of more efficient institutions for existing institutions, thereby reducing the total social waste.

The creation of the Bank of France was, as André Liesse shows in his monograph on the *Evolution of Credit and Banks in France*,<sup>1</sup> a result of the strong will of the great Napoleon. Napoleon said: "I have created the Bank in order to allow discount at 4 %." Seldom, indeed, in the course of more than a century has the Bank of France charged more than 4 % for discount. The Bank of France is an excellent illustration of social progress by substitution of a new method. Let us look clearly at the problem solved by Napoleon and the Bank of France,—problems which confront all peoples.

One notable line of social progress lies along the path of exchanging commodities with greater and greater economy. Economists have divided the inventions of social exchange into groups, such as money as a standard of value for expressing the prices of the commodities of commerce, money as means of exchange, credit and institutions of credit. Governments have generally acted to define the standards of value, to create media of exchange and to license or regulate institutions of credit.

Napoleon asked Molliu, the expert banker who composed the famous Havre Note, to write clearly in his report: "Who issues the bank notes? Who receives the profits? Who furnishes the funds?" So today we may inquire of our experts, "Can our standard of value be improved? Can our media of exchange be bettered? Can the distribution of credit in our country become more general?" Some of these ques-

<sup>1</sup> Published by the National Monetary Commission.

tions are abundantly answered by the experience of the French people and of the Bank of France.

The lessons to be drawn from the experience of the Bank of France and of the French credit institutions are to be found preëminently along lines of a more perfect mechanism for credit operations. How the French system gathers together the idle savings of all of the people and renders it possible to lend out these funds at low interest in a productive manner is demonstrated by Patron,<sup>1</sup> Liesse<sup>2</sup> and Neymarck,<sup>3</sup> in their respective monographs. These experts have shown the wonderful possibilities of a bankers' bank with branches everywhere, existing for the purpose of rediscounting short-term commercial paper. They have conclusively shown how low and how stable is the discount rate under such a system. They have proved that France has weathered with serenity the gravest crises,—whether produced by war or by over-speculation in other countries,—by reason of her splendid banking system.

But, inasmuch as excellent institutions when transplanted must be readjusted to different conditions, how, it may be asked, shall we utilize this French experience? What are the objects which we should strive to obtain? In seeking better monetary and credit systems, the following objects are paramount:

1. Safety so that crises shall be prevented.
2. Low uniform discount rates on commercial paper so that commerce and industry may thrive.
3. General distribution of credit so that small concerns as well as large corporations may have opportunity to borrow at reasonable rates.
4. Opportunity for all the people to secure interest upon their savings, however small, with absolute safety of principal, so that an enor-

<sup>1</sup> *The Bank of France in its Relation to National and International Credit.* By Maurice Patron. Washington, 1910. National Monetary Commission. (Senate doc. 494, 61st cong., 2d sess.)

<sup>2</sup> *Evolution of Credit and Banks in France.* By André Liesse. Washington, 1910. National Monetary Commission. (Senate doc. 522, 61st cong., 2d sess.)

<sup>3</sup> *French Savings and their Influence upon the Bank of France and upon French Banks.* By Alfred Neymarck. Washington, 1910. National Monetary Commission. (Senate doc. 494, 61st cong., 2d sess.)



mous concealed wealth may become available for the development of the prosperity of all.

5. Better facilities for obtaining loans upon commodities, when produced, by a system of licensed warehouses, under federal inspection.

6. Complete development of our clearing-house system so that what the local clearing house is to the banks of a city, a national clearing house shall be to the clearing houses of the country, when operated in coöperation with a central bank.

7. Adequate organization of the foreign exchange market so that our foreign commerce may be assisted.

8. Measures calculated to make more uniform the standard of value so that the bitter class contests, attended by strike, lockout and great popular discontent, shall be lessened. All of these are produced largely by sudden changes in price levels, increasing or decreasing suddenly the cost of living for the millions of our working people.

Let us consider briefly, in the light of the French experience, how we may frame legislation to secure the objects desired.

I. Crises are notoriously produced by a chain of events which may be summed up by the phrase "miscalculation of probable profits, which turns out really to have been over-speculation." For commerce, the "calm health of nations," becomes "feverish over-speculation" only when merchants miscalculate their probable profits.

Inasmuch as calculations of probable profits depend largely upon what merchants expect to get for their goods and to pay for their credits, it follows as the pattern follows the blow of the drop-hammer that sudden and violent changes in commodity prices or in discount rates turn probable profits into losses, producing failures and crises.

How may a law be framed to prevent forever the recurrence of crises,—and the suspension of specie payments by the banks, so long as the country remains upon the gold standard of value? To secure stability of banking institutions, the common practise has been to limit by law or by direction of the governors of the bank the ratio of cash reserves to immediate liabilities such as deposits. Naturally this ratio as a limit between the danger and safety zones in banking, was early thought of, inasmuch as 100% of cash to deposits means absolute safety. On the

other hand, the profits of a bank increase as this ratio is reduced. In the United States, the statute requires 25% cash reserves to deposits for the central-reserve cities, 12½% for the reserve cities and 6% for the country banks. A disproportionately larger growth of institutions outside the national reserve requirements, such as of trust companies, state and private banks, must reduce for our whole banking system the safe average of cash to deposits. This was a potent condition underlying the suspension of specie payments in 1907.

Inasmuch as the points of weakness even in severe crises are comparatively few in number, the failure of a few banks on account of isolated reserves produces grave consequences. The need is for a united reserve, which is the advantage afforded by a central bank.

II. The United States needs, beyond any other financial reform, the establishment of a central bank.<sup>1</sup> A central bank is the economic mechanism which makes interest more uniform over a wide area. The central bank is an institution which lends to banks in every locality, receiving in exchange for the cash advanced the local bank's most liquid assets, which are commercial loans coming due within four to thirty days.

The merchants of New Orleans may require funds in large quantity during a given fortnight. If business is active, the banks may be loaned up to the limit of the reserve requirements. Nothing remains for the bank to do but to raise the discount rate on new loans as the old loans mature, which is really selling the available credit to the highest bidder. Could the banks at New Orleans rediscount with the central bank the notes which would be coming due within a week or ten days, so much additional credit is instantly available for the use of the merchants of New Orleans. Could the banks of the north re-purchase these notes from the central bank, when properly guaranteed, or could new notes of the central bank be issued against such liquid assets, the earning power of the northern banks would be increased, as in this way employment might be found for idle funds.

<sup>1</sup> See my article, "Central Bank as a Federal Clearing House," *Moody's Magazine*, Sept., 1910.

A central bank would charge enough for its services to continue upon a self-supporting basis. Abundant experience is available with reference to such points. The hope of profit cannot be overpowering in the minds of the governors when all earnings above 4 % go to the treasury of the United States, which is the suggestion of Mr. Paul Warburg, expert for the Monetary Commission.

A central bank should exist to serve the nation as a whole. The dividends to the stockholders may be small, but the services to the merchants of the country would be great indeed. The real gains are lower interest rates to merchants, and above all, much less risk of sudden crisis, which is so demoralizing to business success.

The chance of a crisis is reduced, because a great central institution is in a position to command sobriety, to meet financial storm with equanimity and to make available for the development of our local industries the vast surplus wealth of Europe.

Eighteen thousand banks at present, each with a separate reserve and independent of each other, are eighteen thousand sailboats on the water. In fair weather, everything is serene and every sail is set. In a sudden storm like that of 1907, nearly all suddenly take in sail and a large number disastrously capsize. A central bank, on the other hand, is a mammoth ocean liner, built to withstand the tempests.

Besides acting as a federal clearing house, as illustrated above, for the general distribution of credit among all the eighteen thousand banks of the country, a central bank would buy and sell government bonds, deal in foreign exchange and maintain branch offices at important centers throughout the United States.

If the capital stock of the central bank, whether one or two hundred millions of dollars is not essential, were distributed in ownership among the eighteen thousand banks, the merchants of the country and the public at large, with the provisions that each stockholder should have only a single vote, and further that all earnings above 4 % should go to the government, all possibilities of one-man control or of excessive profits would be made impossible at the start.

III. Much may be accomplished in the direction of more general distribution of credit by the combination of the central bank, the postal-savings-bank system and a system of licensed warehouses under federal inspection, when established. The desideratum is to render it easy for all who desire credit to obtain it on the security of commercial stocks, whether merchants' goods in stores and warehouses or farmers' commodities produced and awaiting marketing. The French law "constitutes the landowner, so to speak, a public warehouse. It is he who, without any other controlling appraisalment, makes declaration as to quantity and commercial value to the clerk of the justice of the peace. In short, the agriculturist enjoys a confidence which so far has been denied to industry and commerce."<sup>1</sup>

IV. That the system of postal savings banks already provided by law will collect a vast amount of capital which is now hoarded is extremely probable. This additional capital, in whatever way invested, will afford additional funds as a basis for credit to the advantage of all. At the same time, it is to be hoped that the administration will work out the operation so successfully that at an early date a safe place to deposit money in small amounts will be provided generally throughout the United States.

V. Goods stored in warehouses are a desirable basis for the extension of credit. Cheap storage with large reserves of commodities is an excellent thing for the nation as a preparation for war. Some system of licensing warehouses and maintaining proper statistics describing goods stored as a basis of credit is desirable. Why should not such credit be extended to tenants by the warehouses complying with government requirements as to inspection, by arrangement directly with the central bank? The central bank would become an even greater aid to the development of our commerce and industries.

VI. America is noted for the development of the clearing-house system. On account of an inelastic system of credit, a strong motive has been present to economize the use of coin. In France, the central bank has performed this function to a large

<sup>1</sup> Patron, p. 162.

extent in other ways. It is desirable that a system of clearing between clearing houses should be organized, which may be easily accomplished in coöperation with a central bank.

VII. Just as the clearing-house system should be extended in coöperation with the central bank, every effort should be made to extend the system of clearing international indebtedness in the most efficient manner. In order that our merchants may compete in shipments to foreign countries, foreign exchange rates must become more favorable to our country. Such an organization tending to make more favorable foreign exchange conditions may be furnished by the branches of a great central bank. Much progress is possible in this field. Every effort should be made to extend our commerce with foreign countries; whether by reciprocity or free trade is not essential.

VIII. Says Patron, in his brilliant monograph;

"the interesting evolution of means of exchange which we are witnessing and which is familiar to everybody seems to be leading us, after the well-defined periods of barter and money, to a system of mere clearings of balances. All exchange operations would then be settled by simple book transfers. Coin, thus reduced to the condition of money of account, would cease to play any real part. Economists are even thinking of a return to barter, which would complete the cycle, bringing us back to the original state after thousands of years and combinations of all kinds. Such would be the course of this evolution."

That this evolution will be hastened by the lack of stability of the gold standard seems probable. How violently price levels have fluctuated with the vast increase in the production of gold<sup>1</sup> may be indicated by any one of the important series of index numbers.

If we express the value of gold in the multiple standard as computed by the Dun index numbers, and their continuation, the so-called Gibson Index numbers,<sup>2</sup> using the average prices of 1890-99 as our base 100, we are able to frame a table show-

<sup>1</sup> See my article on the "Gold Flood," *Cosmopolitan Magazine*, June, 1910.

<sup>2</sup> See my article, "A Revised Index Number for Measuring the Rise in Prices," in *Quarterly Journal of Economics*, Aug., 1910.

ing the premium or discount on gold each year in the multiple standard.

*Table Showing the Premium or Discount on Gold Expressed in the Multiple Standard, Base = 100, Average 1890-99 Prices.*

	Price of Gold.	Depreciation Compared with the Average 1890-9.
1900 . . . . .	91	9 %
1901 . . . . .	91	9 %
1902 . . . . .	83	17 %
1903 . . . . .	85	15 %
1904 . . . . .	88	12 %
1905 . . . . .	86	14 %
1906 . . . . .	80	20 %
1907 . . . . .	77	23 %
1908 . . . . .	80	20 %
1909 . . . . .	75	25 %
1910 1st 9 mos. . . . .	72	28 %

It is plain that gold has depreciated to an alarming extent. This heavy depreciation in the gold standard measured in the multiple standard shows how grievous has been the burden on the working classes. Had wages been paid in the multiple standard rather than in gold, the cost of living would have remained relatively constant for our working classes.

In this connection, the Massachusetts Commission on the Cost of Living suggests the legalization of a multiple standard, concluding:

It is hard to see how any harm could come from giving official aid to the maintenance of such a standard for the use of any borrowers and lenders who chose to adopt it. In the event of long continuance of the upward movement of prices, its use might prevent serious injustice and great hardship. We recommend that our senators and representatives consider the expediency of advocating its establishment.

The advantages of such an optional standard for wage contracts would be very great. On the one hand, during periods of rising prices in gold, the cost of living would be met automatically by increasing real wages, and on the other hand in periods of declining gold prices, wages would decrease in proportion with the cost of living, preventing temporary social



extravagance at such times among our laboring classes and resulting crises in our industries after a little time. How such a readjustment can be early made, I have discussed in an article on "The Remedy for High Prices."<sup>1</sup>

To prevent another crisis with all the disastrous consequences, we need quick action by Congress. It is to be hoped that such legislation will be produced at the coming session. These monetary problems are non-partisan. Great credit is due the Monetary Commission for their work. The legislation for postal savings banks is already a reality. In brief summary, let us adopt those measures which experience shows to be both wise and necessary.

Let us have a central bank somewhat similar to the Bank of France, a banker's bank with branches at convenient points, at which all banks of every character may rediscount commercial paper. Such an institution will mean much in the stable development of business. For a reasonably uniform low rate of discount guarantees for a new country great prosperity.

Let us have a successful administration of the postal savings banks so that our people may find a safe depository for their funds at every post office in the land.

Let us encourage all our people to own the bonds of the United States government, since thereby social solidarity is increased. To this end we should place the bonds upon an investment basis, raising the interest rate, and so arranging that United States bonds in small denominations may be purchased at every postoffice.

Let us, either through the central bank or by an independent institution, provide a national clearing house which shall supplement the work of all local clearing houses of the United States.

Let us provide an optional multiple standard in which wages may be paid when so agreed upon in advance. Should the government daily publish the value of gold in the multiple standard based on fifty to one hundred leading commodities, the rate of wages so expressed would vary with the cost of living so that in times of rising prices higher wages would accom-

<sup>1</sup> *Independent*, Feb. 10, 1910.

pany increasing cost of living. With the present violent fluctuations in prices under the gold standard, strikes, lockouts and great popular discontent are caused by rapidly rising prices, and widespread social extravagance by prices falling suddenly and more rapidly than wages.

Let us have licensed storehouses in which commodities stored away become more readily the basis of credit, to the great benefit of our agricultural and merchant classes.

Let us in short have a money and a credit code of law so perfect that it shall become a model for all the nations of the world.

## THE BANKING SYSTEM OF MEXICO<sup>1</sup>

R. M. BRECKENRIDGE

THE functions of discount, deposit and issue are exercised in the Republic of Mexico by twenty-four banks, all governed by a uniform law, first passed in 1897, but later amended, as need arose, especially in 1908. Nine of these banks had been established prior to 1897, and two of them in particular had at that time such special privileges for settled terms, that they were given an exceptional position under the new law.

The older of these was the Bank of London and Mexico, established at the City of Mexico in 1864, and at first without special charter. Notwithstanding the opposition of the commercial houses, who had theretofore carried on a variety of banking and credit activities as incidents of their business, especially of the import and export trades, this bank had grown pretty steadily in strength and had gained good credit, not only for its obligations generally, but also for its issues of notes.

In 1875, two or three small banks, also banks of issue, were founded under state authority in Chihuahua, and in 1879 the century-old *mont de pi  t  * or loan office got the right to do a banking business and issue certificates of deposit payable on demand. These, however, were issued for odd rather than for even sums and were not suited to serve exactly like bank notes for a circulating medium.

Congress in 1881 gave the company afterwards known as the International Bank of Paris a charter for a bank of issue with a capital stock of \$8,000,000 (eight million pesos). This bank entered the field under the style of the National Bank of Mexico; to it were given the functions and opportunities of cashier of the national treasury. It was required to keep its circulation

<sup>1</sup> Abridged from *The Banking System of Mexico*, by Charles A. Conant, Washington, 1910. National Monetary Commission. (Senate doc. 493, 61st Cong., 2d sess.)

covered by readily negotiable securities and to keep a cash reserve equal to one-third of its outstanding notes. The Mexican Mercantile Bank, shortly afterwards started without charter, was absorbed by the National in 1884.

The same year (1884), general rules for the incorporation of banks were laid down in the code of commerce. In recognizing existing charters Congress reserved to the federal government as against the governments of the several states the exclusive right to grant new charters. Issue without government concession was forbidden, the limit of circulation was fixed at thrice the metallic reserve, permission was given to secure one-third the circulation by a deposit of money or government securities, and the circulation was taxed at 5 % on the amount outstanding. The quality of a bank's assets—or the character—was not prescribed. Under this law, several new banks were founded, but the measure lost its importance in consequence of the new charter given shortly afterward to the National Bank of Mexico. In this instrument, the monopoly of banking in the Federal District (surrounding the City of Mexico) seems to have been confirmed to the National Bank and the Bank of London and Mexico. To the National Bank, more particularly, were given certain guarantees against the creation by the government of any further banks. The National Bank was allowed a commission of 2 % for the collection and disbursement of government funds, and 2 % for the service of the national debt, while on its side, the bank undertook to grant the government a standing credit of \$2,000,000 free of interest.

By the year 1896 the treasury had succeeded in adjusting the financial difficulties that the country had suffered as one domestic phase of the world-wide disturbances of 1892-1894. Balance had been restored to the budget; the public debt had been put in order; freedom of internal commerce had been achieved through the abolition of tolls upon interstate traffic. Meanwhile, either through concessions from the federal government itself (there being two views as to the scope of the pledges given the National Bank) or under charters from one or another of the states, the number of banks had been increased. But of the nine then in existence, the two domiciled

at the capital had capital stocks of \$30,000,000 out of a total for all banks of \$35,550,000, and note issues of \$33,366,145 out of a total of \$38,497,467. There was much diversity in powers and duties of these banks. Furthermore, the general rules touching banks in the code of commerce of 1884 had been omitted in the revision of 1889. Properly to help any possible commercial, agricultural and industrial expansion by a well-ordered development of credit institutions it seemed needful now to adopt well-considered and uniform banking laws.

Toward this end, the minister of finance, Señor Jose Y Limantour, prepared in 1896 for a general law upon the incorporation, establishment and operation of banks of issue, mortgage banks and banks of other kinds, and modified the concession to existing banks to make them conform so far as might be to the general law. The "General Law on Institutions of Credit," the preparation of which was intrusted to a commission of bankers (the heads of the three largest banks) and lawyers expert in economics and finance, went into force March 19, 1897. In its final form, this law dealt only with banks of issue, mortgage banks and credit banks (or banks of promotion). The proposals relating to loan pledge banks, savings banks and storage and warehouse institutions which had been advanced by the commission were reserved for later consideration.

In deciding upon what principles the new law should be based, the commission and the minister cast aside at the outset the notion that the right of issue should be confined to a single bank. The constitution of the republic was against it, even though a qualified monopoly had been given the National Bank by charter; public opinion opposed the policy; vested interests arising from later grants would be injured; and political considerations forbade. Close connection between the grantor and beneficiary of a monopoly seemed inevitable. Disaster might come too easily from such a relation between a bank and a government necessarily exposed to chance and change. From the practical view, further, it was argued that successful monopolies of issue were mostly to be found in small countries of dense and homogeneous population, without great variety of climate or resources, or in absolute monarchies. To such as

these, the republic of Mexico, in point of varied products, sparse population, imperfect means of communication and vast expanse of territory, presented the sharpest contrast possible. Local needs, it was believed, were best served by local banks with knowledge of such needs gained on the ground, the initiative and authority of branch banks being less than those of local concerns and their policy being less flexible by reasons of administrative necessity. Finally, to encourage a number of banks to enter business was likely to pave the way for a specialization, in the course of which the great banks of the Federal District would become banks of rediscount and the local banks the original source of local loans, the two classes thus serving as complementary members of a well-balanced system.

Perfect freedom of banking, on the other hand, was reckoned no less unsuitable and undesirable than perfect monopoly. Even the plan to permit anyone who met stipulated conditions to begin banking without a special concession, something after the fashion of national banks in the United States, was rejected. As the minister pointed out in a special report of 1897, the familiarity of the citizens of the two countries with the practise of individual liberty, the culture of the masses and their experience in business matters were by no means identical. Banks had been established but lately in Mexico, the country's practise in the use of credit was but scant, and outside the greater centers the distrust of credit instruments was great, while a certain spirit of imitation was likely, if freedom of banking were conceded, to lead to an undue multiplication of banks. Once a failure occurred, even a small one, a violent reaction against bank-note issues might follow. The government decided accordingly not to go as far as they could, believing it better to be able later on to widen the scope of the legislation than to be forced to narrow it.

With this in mind, a species of banking oligarchy was created. Under the policy adopted, authorization to establish institutions of credit was to be granted only upon special application. And after the first bank had been founded in each of the states, either through one of the banks already in existence accepting



the terms of the new law, or through a new establishment obtaining a charter, subsequent foundations were to be permitted only on terms so onerous as to be practically prohibitive.

While the new law was preparing, negotiations with the banks already chartered proceeded. The National Bank of Mexico waived any rights its charter might have given it in relation to the authorization of other banks, and agreed to raise the non-interest-bearing credit of the Treasury from \$2,000,000 to \$4,000,000, to reduce its commission on the collection and disbursement of government funds from 2 to  $1\frac{1}{2}\%$ , while accepting the risks of this work, and to reduce its commission on the service of the consolidated debt from 2 to 1%. Further, it agreed to open for the *mont de piété* a standing credit of \$500,000 at 3%. On the other side, the National Bank had fifteen years added to the term of its charter and obtained a stipulation that for ten years the National Loan Office should not exercise its dormant authority to issue certificates of deposit or notes payable at sight to bearer. The Bank of London and Mexico, the only other bank which shared with the National Bank the right to keep offices and to issue notes in the Federal District as well as other parts of the country, obtained, on its undertaking to submit to the general law, that extension of its charter which was essential to attract subscription to a considerable increase of its stock.

The mortgage banks permitted by the law of 1897 were of the sort well known in Europe, which issue bonds for long terms and even sums against the general security of realty pledged to them by their borrowers. In no case, under the Mexican law, were such banks permitted to lend except on first lien or to more than half the value of the property pledged, as determined by expert appraisal. Neither might the banks lend on mines, forests, fixtures, churches or buildings for federal, state or municipal purposes. The total of bonds outstanding, the issue of one bank, was limited to twenty times the capital of that bank, as well as to the amount of loans on mortgage, made by it, and each bank was required to maintain a special cash guarantee fund in amount larger than a half-yearly service of interest on the bonds outstanding. Holders of the bonds

enjoyed a prior lien against the mortgages, fund and capital paid up or uncalled.

The banks of promotion—credit banks or finance banks—were intended for the provision of credit to agricultural, mining and industrial ventures for longer terms and on different security than it seemed proper for commercial banks of issue to accept. These also were authorized to issue a sort of bond, but the term of such bonds was limited at first to two and later (in 1908) to three years. Proceeds of these bonds might be lent on mortgage, but not up to more than fifteen per cent of the value of the property benefited. Lending to mining ventures was conditioned on the report of experts that the proceeds would suffice for repayment, and the banks were given the right not only closely to supervise the management but also to have the proceeds remitted to them as they were realized. Banks of promotion might also guarantee notes running not more than six months, or lend upon the collateral security of stocks and bonds. Forty per cent of their deposits on demand or on three days' notice they were required to hold in cash—the remainder in paper discounted for not more than six months.

Like the mortgage banks and banks of promotion, the banks of issue authorized by the new law were to be limited-liability joint-stock concerns, the liability of the shareholders being limited to the amount of stock for which they had subscribed. No bank of issue could be started without special concession of the Executive of the Republic, and no concession was to be granted unless government bonds nominally worth twenty per cent of the minimal required capital had been deposited in the national treasury or the National Bank of Mexico. Directly the bank started, this deposit was to be returned. The companies to which operation of banks of issue was confined were to consist of at least seven members; their capital stock was to be not less than \$500,000 (raised in 1908 to \$1,000,000) of fully-subscribed capital of which not less than half was to be paid up, and it was required that until that fund was equal to a third of the capital, ten per cent of the profits should be set aside each year to the reserve fund. Charters were limited to thirty years from the date of the law for banks of issue. For-

eign banks were forbidden to open agencies in the republic for the issue or redemption of notes.

In respect more particularly of issue, the monopoly for that field of the two banks domiciled in the Federal District was continued. Elsewhere banks could be established, but solely according to the terms of the law of 1897. The total amount of notes of any bank outstanding was limited to thrice the paid-up capital; the sum of notes outstanding and deposits payable on demand or at not more than three days' notice to twice the bank's holdings of cash and gold and silver bullion. The apparent severity of this latter restriction was tempered by the exclusion from the category of demand deposits of deposits on "account current" (in reality the proceeds of loans, and in practise the item in which is reported a great part of the Mexican banks' lending business) and accounts at reciprocal or differential interest, even though these were subject to check. The bank whose circulation ran in excess of either of the limits fixed was required so to report to the minister of finance and to abstain from making new loans. Fifteen days later if the circulation were still in excess, the finance department might give the bank not more than a month in which to adjust its circulation on pain of liquidation and charter forfeiture.

Bank notes could be issued only in denominations of \$5, \$10, \$20, \$50, \$100, \$500 and \$1000 as non-interest-bearing, non-legal-tender promises to pay to bearer on demand dated at the place of issue and signed by officers of the bank and government inspectors. They gave the holders a lien on the bank's assets prior to all other creditors of the issuer save owners of property pledged to the bank, mortgage creditors when the mortgage involved had been registered previous to the transaction whereby the bank acquired the mortgaged property, and the federal, state and municipal governments. The notes were valid obligations against the promisor during the whole term of its existence. Even as against a failed or liquidated bank they were to lapse only five years after the failure or liquidation. Head offices, apparently, were required to redeem on presentation both their own notes and those of the branches; branches, only such notes as they had put into circulation. Under the

amendment of 1908, banks of issue were required periodically to exchange the notes of other banks in their possession and in the absence of express agreement to the contrary, to settle balances in cash. Further, to guard against overissue, it was forbidden to put notes into circulation unless the proper stamp had been engraved upon them by the government stamp-printing department. To this the finance department could give permission only when satisfied that the limit of issue would not be exceeded.

According to article 29 of the amended law, it is prohibited to banks of issue:

1. To make loans or discount notes or other paper running for more than six months.
2. To discount notes or other commercial paper without at least two signatures of well-known solvency, unless collateral is given.
3. To make loans secured by mortgage except in the cases set forth in the following article.
4. To make loans without sufficient collateral to persons or associations not domiciled or having business of importance in the states or territories wherein the home office, branches, or agencies expressly authorized by the treasury department may be located. From this provision are excepted operations between banks.
5. To mortgage their real property or borrow on their credits.
6. To pledge or pawn their bank notes or to contract obligations respecting them.
7. To accept uncovered bills of exchange or drafts, or to open credits not revocable at discretion by the bank.
8. To hold corporation stocks or bonds exceeding 10 % of the amount of paid-up capital and reserve at the time. Securities representing the federal debt and others where the capital or revenues are guaranteed by the government are not included in this limitation.
9. To operate on their own account mines, metallurgical offices, mercantile establishments, industrial or agricultural enterprises, or to take part, either by general or silent partnership, in associations [except under certain specified circumstances].
10. To engage in insurance operations.
11. To accept responsibilities, whether direct, indirect, or associate, from any single person or association, which in the aggregate exceed 10 % of the paid-up capital of the establishment. Rediscounts between banks are excepted.

There remain now to be noted, among the clauses of the law applicable to all banks, a number of restrictions likely to make for the sound conduct of banks of issue. Banks of all sorts were forbidden, for one thing, to acquire real estate except what might be needed for office purposes or what they might take over in settlement of claims. Property of the latter sort banks of issue were enjoined to sell within two years, otherwise the department of finance was in duty bound to sell it for them. Banks were forbidden to buy their own shares or to do business on the security of such shares. Neither might they consolidate with other banks without the permission of the department of finance. Sanction for the more important inhibitions of the law was provided in the shape of forfeiture of charter, on the one hand, and on the other, in the civil and criminal liability of boards of directors and of managers. During the first year of a bank's existence, the members of the board of administration were forbidden to become debtors of their bank, either directly or through companies in which they were interested. After that time, they might borrow only when another firm of well-known solvency was associated in the debt or when adequate collateral security was furnished. Before they acted, however, as members of the board, they were required to give bond in the form either of a cash deposit or of shares of the bank as the by-laws might prescribe. Managers and officers might not on any account transact private business with the bank, obligate their firms thereto or become sureties.

Quite apart from these internal precautions, or better perhaps independently of them, the law established a system of thorough-going external inspection of its creatures and arranged for its exercise by the department of finance either through inspectors permanently appointed for each bank, or through special inspectors appointed for particular cases. Their duties were carefully laid down in the law.

Fairly full monthly reports of assets and liabilities, though by no means so detailed as the Canadian banks are obliged to make, were required of all institutions of credit. On the whole, the form of report selected was probably adequate to any necessary publicity.



In putting the new system of regulation into effect, it was provided that all the existing banks in the several states, if they chose to accept the terms of the law, should be considered "first" banks of issue in the states where they were domiciled, whatever their number. By becoming "first" banks, they obtained a relaxation or reduction of divers stamp duties, a reduction of notarial fees and, except for the tax on lands and buildings occupied for office purposes, an exemption from federal, state and municipal taxation.

In states or territories where no bank was domiciled at the time the law was passed, the first corporation thereafter to be organized became the "first" bank. And to these "first" banks was insured a practical monopoly until 1922, in their respective territories, save for the competition offered by branches of the two great banks of the Federal District. The law provided, that is, that to none other than the first banks should there be granted either reduction of stamp duties or exemption from taxation. It went further in fact and laid down the rule that other than "first" banks should be subject not only to all taxes imposed by general laws, but also to a special federal tax of 2 % per annum on their several paid-up capitals. The position of the favored few was reinforced by a law of 1905, which forbade the issue of additional concessions (charters) until after December 31, 1909. The law of 1908 extended this term until March 19, 1922.

Under the law of 1897, as amended now and again, and as interpreted from time to time in circulars issued by the department of finance, there were working on June 30, 1909, twenty-four banks of issue, with an authorized capital of \$118,800,000 (of which all but a million odd was paid); two mortgage banks, with a capital of \$10,000,000 (\$8,500,000 paid up), and six banks of promotion, with \$47,800,000 capital authorized and \$44,800,000 paid in.

The two mortgage banks had served perhaps as well as possible the purposes for which they had been authorized. At any rate, they had outstanding on June 30, 1909, the tidy sum of thirty-seven millions of mortgage loans and total assets of nearly fifty-two millions.



So far as it dealt with banks of promotion—credit or finance banks—institutions for the encouragement of agricultural, mining and industrial enterprises, the law seems to have imposed restrictions so severe as to hinder seriously and almost to defeat its objects. Chief of these banks was the *Banco Central Mexicano*, with \$30,000,000 paid-up stock, a venture started in the Federal District, largely with the aid of foreign funds, as a bank of rediscount for the state banks and as an agency of redemption for their notes, but only as presented by other banks. With the growth of function of this institution, it has become a bank of banks, a clearing agent, a representative of provincial finance at the capital, and the organ through which mutual support is extended jointly to their several colleagues by the banks of issue in the states. As it is now and has been since 1902, each such state bank holds shares of the *Banco Central* equal to 10 % at least of the holder's capital. It carries with the *Banco Central* an account at differential interest, with the right to a credit equal to its share in the Central's capital. And directly it considers itself threatened, it may call on the *Banco Central* for the use of a fund—equal to 50 % of the capital of the bank in trouble—which is contributed by the other banks in amounts not to exceed 2 % of their several capitals. The money thus obtained is used to redeem the notes of the threatened bank, but at a charge to the beneficiary of 12 % and the costs of the operation. What part of the stock of the *Banco Central* the state banks did not furnish has been taken by foreign syndicates, without, however, their gaining thereby the right to interfere in the Mexican management of the bank. The assets of this corporation amounted on June 30, 1909, to \$89,011,861, of which discounts stood for \$13,649,884, loans on collateral for \$22,476,887, creditor accounts current (loans) for \$11,279,234, and accounts in trust (for the most part funds in transfer or awaiting collection) for \$14,398,570. In 1908 its cash turnover was more than two and a half billions.

Additions to the number of banks of issue proper began under the law of 1897 soon after Congress passed it. Over the whole period—say roughly from January 1897 to June 1909—there has been an increase in the paid-up capital of banks of

issue from \$23,010,000 to \$111,780,700; in their coin and bullion from \$42,573,025 to \$84,352,541. Other items of the balance sheet compared as of slightly different dates show:

	December 31, 1898	June 30, 1909
Stocks and bonds . . . . .	694,436	41,152,212
Discounts . . . . .	56,588,275	87,058,205
Loans on collateral . . . . .	22,440,691	53,219,342
Mortgage loans . . . . .	418,268	10,432,603
Various credits . . . . .	36,380,843	446,772,325
Total assets . . . . .	170,650,776	736,191,398
Capital paid up . . . . .	29,295,000	117,780,700
Reserve fund . . . . .	3,757,864	32,584,425
Special guaranty fund . . . . .	3,212,379	18,723,668
Deposits at sight or at not more than 3 days . . . . .	1,143,623	72,126,285
Deposits at more than 3 days . . . .	2,199,886	56,125,969
Notes in circulation . . . . .	54,375,769	92,221,477
Various debits . . . . .	61,961,253	343,609,572
Total liabilities . . . . .	170,650,776	736,191,398

The figures of the right-hand column are some distance below the high mark for the items of discounts, loans and various credits, in which, of course, the creditor accounts current appear. Reserve funds and notes in circulation reached their high point in June, 1907, prior to the panic or contraction from which Mexico suffered that year in common with the United States. It is not without significance that the reduction in reserve funds alone amounts to nearly \$12,000,000. In an abridgment so brief as the present it is impossible even superficially to follow Mr. Conant's scholarly and luminous account of the economic sequences of the industrial progress of Mexico during the last fifteen years, of the influx of foreign capital, the effect of the fall and the subsequent rise in the value of one of the country's chief products—silver bullion, the manner in which Mexican currency was shifted to a gold standard, the methods, purpose and influence of the supervision exercised by the government over banks of all sorts, and the conduct and experience of the banks in the crisis and liquidation of 1907. But attention ought to be called to certain outstanding facts.

One is, that in spite of increased competition in the function

of issue, the great central bank, with its place of vantage as financial agent of the government, has more than held its own. The paid-up capital of the National Bank of Mexico on June 30, 1909, was more than \$31,500,000, out of a total of \$117,780,700; its reserve fund \$16,000,000 out of \$32,584,425; its circulation \$40,214,874 out of \$92,221,477; and its total assets \$300,455,221 out of \$736,191,391 for the whole system. Next was its still older colleague in the Federal District, the Bank of London and Mexico, with \$32,250,000 in capital and reserve, \$14,175,096 of circulation and total assets of \$180,143,356. Two such powerful banks as these must alone be mighty factors for conservatism and soundness in a system containing no real rivals. It ought to be remarked, too, that the small number of banks, and the extraordinarily wide powers of visitation—more the powers of censors than of mere inspectors—conferred upon the officers of the ministry of finance were well calculated to check banking indiscretions, errors and excesses against which the safeguards of the statutes alone might not have sufficed.

So far as the public is concerned, the banks appear to have supplied a service which in large measure, at all events, has been satisfactory. A considerable reduction of the rate of interest has been brought about, and with the increase of banking offices, a wider and better distribution of credit. In exercising their rights of issue the banks have furnished paper currency in quantities quite adequate to a population long used to hard money and inclined to prefer it. The ultimate security of this paper has been protected by the preferred lien given its holders against the assets of the issuers; freedom from depreciation by the immediate convertibility practically assured by the reserve requirements, by redemption at the head offices of the state banks and by the note redemption exercised on their behalf in the Federal District by the *Banco Central*.

The demand for long-term credit in the expansion which preceded the troubles of 1907 was so powerful and insistent that banks of issue were tempted to enter the field which the banks of promotion were intended to work. More than one of the banks of issue yielded to the temptation; indeed, the pressure was more or less effective upon most of them. Some part of

their own funds and the funds entrusted to them became tied up and unavailable. Certain risks that they assumed, notably loans upon the bonds and stocks of irrigation and agricultural development ventures, could not be turned promptly into cash. The federal government stepped in and assumed authority in the act of June 17, 1908, to invest a sum of not more than \$25,000,000 in works for the utilization of water for agriculture and stock-raising, either by executing them directly or through assistance to private enterprises. At this time, further, the executive was authorized to guarantee both principal and interest of bonds issued by specially chartered institutions lending for long terms at moderate interest to agricultural, cattle-raising, combustible mineral and metallurgical enterprises. Four of the largest banks furnished a third of the funds toward a new mortgage-loan company capitalized at \$10,000,000 and authorized to issue bonds as a first lien against its assets; the government another third, and public subscription the remainder. Within less than eight weeks from the date of the concession, this new land bank floated \$20,000,000 of its bonds, guaranteed in full by the republic and free of tax, upon the markets of New York and Europe. Thus long-term securities were exchanged for liquid foreign capital, the character of the assets of Mexican banks notably improved, and the banks' position vastly eased.

## THE ITALIAN BANKING SYSTEM

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THIS paper will examine Canovai's report on *Italian Banks of Issue*<sup>1</sup> from various standpoints. First, the main facts of the history of banking in Italy as given by Canovai will be traced. Next, his argument in favor of a central bank will be formulated and its applicability to the conditions which exist in the United States will be considered. Finally, certain conclusions will be drawn from the banking experience of Italy.

The history of banking in Italy divides itself into three periods: (1) the origin of the banks of issue; (2) the association of the banks of issue; and (3) the period since the banking law of 1893.

Our account of the Italian banks need not go back any farther than the origin of the six banks which were later banded together in the association. These banks were the National Italian Bank, the National Tuscan Bank, the Tuscan Credit Bank, the Roman Bank, the Bank of Naples, and the Bank of Sicily. Most of these banks were the result of the fusion of smaller banks. We will trace briefly the history of each.

The National Italian Bank was formed in 1849 by the union of the Bank of Genoa and the Bank of Turin. Each of these banks had a charter from the governor of the Sardinian States, the first granted in 1844 and the second in 1847. The agreement to unite was approved by royal decree December 14, 1849. The life of the grant was to be thirty years. The new bank could issue notes up to three times the amount of its metallic reserves. The capital of 8,000,000 lire<sup>2</sup> was raised

<sup>1</sup> *Italian Banks of Issue*, by T. Canovai. Washington. National Monetary Commission (Senate doc. 575, 61st Cong., 2d sess.).

<sup>2</sup> The lira is worth about 19 cents.

in 1852 to 32,000,000 lire, and then in 1859 a new charter for the bank increased the capital to 40,000,000 lire. The new charter provided for first-class branches in Genoa, Turin, and Milan, in addition to the branches opened in other cities. In 1860, the Bank of Bologna and the Bank of Parma were combined with the National Bank. The capital of the bank was increased in 1865 to 100,000,000 lire, and the bank took over the treasury service for the state. When the Italian state annexed the Venetian provinces in 1866, the National Bank took over the Mercantile Trust Company of Venice, and in its place established a first-class branch in Venice. Thus the National Bank was the result of the fusion of five banks.

The National Tuscan Bank was formed by the consolidation, in the years from 1857 to 1860, of banks in Florence, Leghorn, Siena, Arezzo, Pisa, and Lucca. It was a bank of issue and had in 1870 a nominal capital of 30,000,000 lire, of which 21,000,000 was paid up.

The Tuscan Credit Bank for the Commerce and Industry of Italy was created in 1860 by a decree of the provisional government of Tuscany. But 5,000,000 of its 40,000,000 lire of capital was paid up. It was not a bank of issue in the ordinary sense, since it could issue only certificates of deposit.

The Roman Bank was founded in 1850 by a papal decree. Its charter ran for thirty years, and granted to it the monopoly of banking operations and the issue of bank notes in the papal states. The bank did not prosper, and after 1856 the papal government was forced to intervene to guarantee the notes in circulation. When the papal states were annexed to Italy in 1870, the bank was granted an indemnity for permitting the other banks to establish branches in Rome. The four banks thus far treated were joint-stock banks. The other two were of a different character.

The Bank of Naples was created in 1796 by the fusion of seven pawn banks. These banks had been formed for charitable purposes. The profits went to help the needs of the people of Naples, *e. g.*, to make loans to the poor without interest and to ransom Christians who had been captured by infidels. The needs of the state in the way of loans soon brought about



a condition in which there was nothing to distribute in charity. In 1817 the bank assumed the name Bank of the Two Sicilies and was divided into two sections, one to have charge of the treasury service of the state, the other to offer banking facilities to private individuals.

The Bank of Sicily was formed from two savings banks, one at Palermo and the other at Messina, which had been under the control of the Bank of Naples.

As being typical of the dealings of these banks with their respective governments, we may trace some of the experiences of the National Bank. In 1866, the government borrowed 250,000,000 lire from the bank, at the same time relieving the bank from the necessity of redeeming its notes in specie by giving them forced currency. This loan amounted to two and one-half times the capital of the bank. In 1870, the government borrowed 100,000,000 lire, and later, 122,000,000 lire. In return for these loans the bank was freed, not only from redeeming its notes on demand, but also from keeping a metallic reserve for the notes loaned to the government. These loans were partially secured by bonds on ecclesiastical property. The government paid 0.6 % interest on the loan. In the same year the government borrowed 40,000,000 lire more, this time giving treasury bonds for security. In 1871, the government borrowed 150,000,000 lire secured by 5 % *rentes*, and in 1872, 300,000,000 lire more. In each case the bank was allowed to increase its circulation by an amount equal to the amount of the loan and was not required to hold a metallic reserve against the notes. The bank seemed to be a great help to the state.

In consequence of these practises the banking situation in Italy in the crisis of 1873 was serious. The various banks had issued 800,000,000 lire of notes for the states and 700,000,000 lire on their own account. Besides these bank notes there were in circulation credit instruments of people's banks, of firms, and even of private persons. Exchange was 10 % or more above par. The bank notes were depreciated. With this situation the first period closes.

As a compromise between those who desired the state to

issue all of the notes and those who desired the banks to issue all of the notes, there was organized an association of the banks of issue, consisting of the National Italian Bank, the National Tuscan Bank, the Tuscan Credit Bank, the Roman Bank, the Bank of Naples and the Bank of Sicily. This association was formed by a law of April 30, 1874. It was to furnish the government up to 1,000,000,000 lire of notes. These notes were to have forced circulation for two years. The notes which the banks issued on their own account were to be redeemed on demand in the notes issued by the association for the government or else in specie. Of course, the banks always redeemed their notes in the notes of the association. Both the bank notes and the notes of the association depreciated. Other features of the law of 1874 which were not of much significance in the conditions then existing, but which later were of importance, are as follows: the note issue was limited to three times the paid-up capital in the case of the joint-stock banks and to three times the patrimony in the case of the banks of Naples and Sicily; a metallic reserve of one-third the amount of the notes was to be held; the monopoly of note issue was given to the banks in the association; all notes not covered by the metallic reserve were taxed 1 %; and provision was made for the increase of notes under certain conditions.

It was not until 1881 that a law was passed abolishing the forced circulation of the notes and dissolving the association. The government borrowed 644,000,000 lire, 600,000,000 lire of which was to be used to redeem the notes of the association. It was thought that 340,000,000 lire of the notes in small denominations might remain in circulation until they could be redeemed by the surplus of the budget. By 1885, the outstanding notes had been reduced to 196,000,000 lire.

The next episode has to do with the founding by the National Bank of a *Crédit Foncier*. The outcome is instructive. It emphasizes again the danger which attends the investment of bank funds in non-liquid assets. The bank had helped agricultural and building operations with liberal loans. When the notes were not paid as they became due, the bank took mortgages as securities. The *Crédit Foncier* was founded partly

to take over these accounts. It was successful in making loans, but hard times made the repayment difficult. The bank was forced to lend the *Crédit Foncier* money to meet its obligations.

While the National Bank was thus engaged, the Roman Bank was aiding a building boom in Rome. It became so deeply involved that it was, in fact, insolvent. It was unable to redeem its notes, and for political reasons it was not forced to do so. The government allowed the National Bank to issue 50,000,000 lire of extra notes to be used in subsidies for the building associations. The second period of Italian banking history ends with the Roman Bank insolvent and the other banks loaded down with non-liquid assets.

The panic of 1893 and the failure of the Roman Bank brought about a reorganization of the banks of Italy. The new Bank of Italy was a fusion of the National Italian Bank, the National Tuscan Bank, and the Tuscan Credit Bank. For political reasons the banks of Naples and Sicily were allowed to remain independent. The Roman Bank was insolvent. The main provisions of the law of August 10, 1893, will now be taken up. The capital of the Bank of Italy was to be 300,000,000 lire, of which 210,000,000 lire was to be paid up. The amount of notes that could be issued was limited. The Bank of Italy could issue 800,000,000 lire, the Bank of Naples 242,000,000, and the Bank of Sicily 55,000,000. After fourteen years these amounts were to be reduced to 630,000,000, 190,000,000, and 44,000,000 lire respectively. The idea was to limit, after the non-liquid assets had been realized upon, the notes to three times the capital. However, notes to any amount might be issued if they were secured by an equal amount of metallic money or gold bars, or if they were issued to be loaned to the state. The notes were to be redeemed in fourteen cities. The rate of discount for the three banks was to be the same and could not be changed without the permission of the government. Each bank was forced to receive the notes of the other banks. After a year the reserve required to be held against the notes was to be increased from 33 % to 40 %. Of this 40 %, 33 % was to be metallic, at least three-fourths gold. The remaining 7 % might be in bills of exchange.

Later, the 7 % might also be in bonds of foreign states or in balances with foreign bankers. The notes in excess of the metallic reserve were taxed 1 %. On the excess of the circulation above the amount provided for by law, there was a tax equal to double the discount rate. The kinds of business in which the banks could engage were enumerated. There could be discounts of short-time commercial paper and loans on collateral of various kinds, but not on real estate. The amount of interest-bearing deposits which the banks could receive was limited and also the rate of interest which could be paid on deposits. The banks were given ten years in which to liquidate those of their operations, mostly in real estate, which were not allowed by the new law. Certain remissions of fees were made to aid in the liquidating of the real-estate operations. Government inspection of the banks was provided for. The liquidation of the Roman Bank was entrusted to the new Bank of Italy. To prevent politicians from meddling in the affairs of the bank, it was provided that members of parliament could not hold any office in the banks.

After 1893, all was not plain sailing. A parliamentary investigation showed how far the banks had violated the law. There was a large deficit in the budget, stocks fell in value, runs were started on the banks by the depositors, and many credit institutions failed. In an effort to better the situation the banks were allowed to issue notes above the limit by paying a tax equal to two-thirds of the discount rate. Metallic reserves were, however, to be held against the notes. This modification came but twenty-three days after the law had gone into force. The action stopped the runs on the banks. In 1894, a law was passed authorizing an increase in the amount of state notes from 367,000,000 lire to 600,000,000. These notes had forced circulation. There were, in 1908, still in circulation 436,000,000 lire of these notes. Examinations disclosed 638,000,000 lire of operations not in liquid form or not allowed by the new law. The liquidation of these was an operation which required much time, and consequently in 1895 the time for that operation was extended from ten to fifteen years. The loss was covered by levying assessments on the stockholders, by writing off part of the capital, and by using profits.

In 1895, the Bank of Italy assumed the treasury service for the government, taking charge of all receipts and disbursements. The bank deposited certain government obligations as a guarantee, and the government agreed to keep with the bank a cash balance of at least 30,000,000 lire. The law of 1898 strengthened the requirements for the security of the notes. The metallic reserve was to be held at a certain amount even if the decrease in the circulation made this amount a reserve of more than 40 %. The note holders were given a lien on most of the assets of the bank not specifically pledged for some other purpose. The tax on the circulation was to be reduced gradually from 1 % to  $\frac{1}{16}$  of 1 %. When the low rate was reached, the state was to share in the profits of the bank, getting one-third of the profit between 5 % and 6 % on the capital and one-half of the profit above 6 %. The year 1898 was a time of great speculation and activity in industry. With 1900 began a period of prosperity for the country and improved financial condition for the government. Slight changes were made in the banking situation by the law of 1907. The note circulation for the bank of Italy was increased to 660,000,000 lire, for the Bank of Naples, to 200,000,000 lire, and for the Bank of Sicily, to 48,000,000 lire. The requirement for the irreducible metallic reserve for the notes was changed as follows: for the Bank of Italy from 300,000,000 to 400,000,000 lire, for the Bank of Naples from 90,500,000 to 120,000,000, and for the Bank of Sicily from 21,000,000 to 28,000,000. Changes were also made in the taxes on the excess circulation. Thus the Bank of Italy may now issue an excess of 50,000,000 lire by paying a tax equal to one-third of the discount rate; an excess of from 50,000,000 to 100,000,000 lire is taxed two-thirds of the discount rate; from 100,000,000 to 150,000,000 the tax equals the discount rate; any excess above that is taxed 7.5 %. By 1908 the liquidation of the assets was complete and the banks were in a sound condition. With this brief sketch we must leave the history of banking in Italy and turn to the consideration of the argument for a central bank.

Canovai's entire essay is an argument for what he calls unity



of issue as against plurality of issue. He lets no opportunity pass to point out how disaster followed from the plurality of banks or how a strong central bank might have saved the day. We shall take up his statement of the advantages of a central bank, the disadvantages of plurality of banks, and some of the difficulties encountered in going to a unified system from the system of plurality of banks. Some notice will be taken of the validity of these arguments when applied to the United States.

A central bank, according to Canovai, can (1) regulate the circulation and credit, (2) aid in crises, (3) support the state credit and take charge of the treasury service. (1) Canovai considers the condition of Italy after the passing of the law of 1893 as illustrating unity of issue. True, there are three banks of issue, but they issue under the same conditions. He bewails the fact that no central bank was started when the kingdom began. In the period before 1893, bank notes were issued to excess and these notes were used as the basis of unwise extensions of credit. The six banks had no interest except their own. There was no central authority to regulate the issues as there has been since they have unity of issue. (2) To a very great extent a panic is a matter of fear. A strong central bank can, by prompt and decisive action, allay this fear and stop the panic. The fearful effects of the panic of 1893 when there was a plurality of banks are contrasted with the situation in the last panic. In 1907 the three banks refused to issue more notes for speculative purposes and by their quick action in aiding credit institutions helped to allay the fear. (3) The central bank can take charge of the treasury service for the state. The Bank of Italy looks after the receipts and disbursements of the government without any pay, other than the use of a certain balance which the government is required to keep with it at all times. The bank can be of much use in managing the loans when the state needs to borrow.

The part of the argument which deals with the disadvantages of plurality of banks is most emphatically put. Most of the evils in the banking experience of Italy are attributed to the plurality of banks. The banks violated the law in regard to the amount of issues in their rivalry with one another. There was



competition also in the granting of discounts. The desire for dividends led to laxity in making discounts. The notes so freely issued were often used for speculative purposes, sometimes dishonestly. With the rivalry there was no attempt to check unsound credit. The cry for more notes from those who confused the lack of capital with the lack of money was always met by issues of notes. In time of crisis each bank worked for its own interest.

Canovai's treatment of the difficulties of going from a system of plurality of issue to one of unity, is of interest. He has no patience with the idea that there is danger in giving to one bank the monopoly of issue, since it in no way gives to the bank a monopoly of credit. Custom and tradition are recognized as strong defenses for the system of plurality where it exists. By far the greatest difficulty comes from the interests of the plurality of banks. These banks do not wish to lose their right of issue and they can bring much pressure to bear upon the legislative body to prevent action toward unity.

We may now consider the validity of the arguments as applied to the United States. There are some great differences between conditions in the United States and in Italy. There is the very obvious difference in size. We know of the great differences in the natural resources and the variety and extent of the industrial development. Commercial habits are different; the use of bank notes is more general and the use of checks less common in Italy than in the United States. The problem, in Italy, had to do with six banks of issue, while in the United States there are about 7,000 national banks, and they are all banks of issue. There seems to be a chance for a mistaken argument from Italian conditions. As Canovai puts the argument, we have disaster under plurality of banks, improvement under approximate unity. The statement might be put fully as well, that there was disaster under unregulated banking, with no publicity or inspection or any method of enforcing the law, and improvement when the law and its enforcement were improved. The point is, that a central bank operating under the same laws and same lack of enforcement of law would have been as efficient an agent of disaster as the six banks were.

However, there is no reason to deny that the argument as to the advantages which come to the country from having a central bank to look after the treasury service and to give unified control of the money situation in a time of panic, applies to the United States as well as to Italy. The differences which have been enumerated above may make the realization difficult but they do not touch the question of the advantages.

No matter what its bearing on the question of the central bank, the history of banking in Italy as given by Canovai presents numerous lessons.

One of the most striking of these lessons and one which Canovai points out with great clearness is, that the question of business prosperity or adversity is not merely a banking question. He points out the influence of such factors as the general state of industry, the investment by the government in railroads, the general extravagance of the government, a debit balance on foreign trade, agricultural crises, political conditions, prosperity of the countries with which the country has relations, and finally speculation. This recognition of the multiplicity of the factors involved is certainly to be commended.

The evil of legislation which takes into account sectional interests, is shown with great clearness. The temptation to pass such legislation was doubly strong in Italy where the parts of the kingdom had been so recently independent. The possibility of sectional conflicts of interests in the United States, should new legislation be attempted, is a factor which may be of importance.

One of the most important lessons to be drawn from Italy's experience is the necessity for publicity of bank accounts. The parliament in legislating did not know the condition of the banks. New privileges were granted to banks which were really insolvent. The limit put on circulation by the act of 1874 seems to have been disregarded with impunity; in fact, the act of 1890 legalized the amounts of notes over the limit which the banks had been keeping in circulation.

That land should not be used as security for loans or notes by a bank of issue, is a lesson which Italy learned by sad experience. The use of land, even indirectly through *Crédit*

*Foncier* institutions was found to be dangerous. The loans whether on agricultural land or on city property proved to be extremely hard to liquidate.

Very often the Italian government used the banks as a means for borrowing money. Frequently the transaction was in this form: the bank gave the state notes; the state released the bank from the necessity of keeping reserves for these notes, proclaiming them legal tender and so giving them forced circulation. It was one more example of the attempt to use government debts as money. In condemning this borrowing, it is not to be thought that it is not legitimate for the government to borrow from a central bank. Indeed it is one of the most important functions of such a bank to tide the government over temporary deficits, or to permit the government to anticipate certain revenues. It was the form of the borrowing which was objectionable in much of the Italian experience.

The experience of the Bank of Italy in 1900 suggests a method for preventing a central bank from being used in speculation. The Bank of Italy, at that time, was not allowed to discount bills not of commercial origin, although they were secured by collateral. In this way a check was put upon the speculation which was rampant at that time. It is clear from the disastrous experience of the Italian banks with the building speculation in Rome, that no central bank should make loans which depend upon the success of some speculative venture for repayment.

# THE BANKING SYSTEMS OF THE NETHERLANDS, RUSSIA AND JAPAN<sup>1</sup>

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## I

### THE BANK OF THE NETHERLANDS<sup>2</sup>

THE Bank of the Netherlands was chartered in 1814 as a joint-stock company. The original charter, which was to run twenty-five years, has been renewed from time to time. The bank was located at Amsterdam and was empowered to establish branches. As none were established at first, such foundation was legally required, and by 1907 there were 107 branches.

The original capital of 5,000,000 florins<sup>3</sup> was increased in 1819, 1840, 1863 and 1888 until it now stands at 20,000,000 florins. One-fifth of the capital and surplus may be invested in approved securities. In 1888, a surplus was for the first time made obligatory and fixed at 25 % of the capital, although a surplus of that amount had actually existed for many years.

The bank has enjoyed a monopoly of note issue since its foundation, although since 1863 the government has reserved the right to create other banks of issue and legalize the circulation of foreign bank notes. Until 1863, the amount of notes issued was fixed by law. In that year, however, the maximum limit of note issues was removed, and in the following year a metallic reserve of 40 % was fixed against all demand liabilities including bank notes. In 1907, there were outstanding 266,000,000 florins in bank notes, the ten-florin note being

<sup>1</sup> Based on *Banking in Russia, Austro-Hungary, Holland and Japan*. Washington, Government Printing Office. Publications of the National Monetary Commission (Senate doc. 586, 61st Cong., 2d sess.)

<sup>2</sup> *The Bank of the Netherlands*. By R. van der Borght, *op. cit.*

<sup>3</sup> A florin is approximately 40 cents.

the smallest denomination allowed. The notes are redeemable on demand in gold or silver, are untaxed, and are full legal tender, save in the case of payments made by the bank itself.

The bank is privately owned, but the government exercises supervisory power by means of a special appointee, and also appoints the president and secretary of the directorate. The shareholders elect five directors, who, with the president and secretary, have the active management of the bank.

Until 1863 the bank rendered small service to the state. In that year it was made liable to take over the entire service of the royal treasury, but since 1871 it has redeemed this obligation by an annual payment of 100,000 florins. By the act of 1903, the bank is required to make advances to the government without interest, up to the amount of 15,000,000 florins, whenever the finance minister thinks it necessary to strengthen the royal treasury. It also acts as agent for the postal savings system, and has the management of the central treasury at Amsterdam.

In 1888 for the first time the government was given a direct share in the profits of the bank. At the renewal of the charter in 1903, it was provided that of the net earnings a 3½ % dividend should be paid the shareholders; 10 % of the remainder should go to the surplus, provided the latter did not, at the time, equal 25 % of the capital; of what was left, the state should receive two-thirds and the shareholders one-third. The state's share of the profits in 1906-1907 was 3,397,349 florins.

The bank secures the bulk of imported gold since it pays 1648 florins per kilogram for pure gold, whereas the amount paid by the mint in coin is only 1647.87 florins.

## II

### ORGANIZATION OF BANKING IN RUSSIA <sup>1</sup>

The Imperial Bank of Russia was chartered in 1860, and was reconstituted in 1894 so as to give greater assistance to the development of industry. Its capital was originally 15,000,000 rubles,<sup>2</sup> with a surplus of 1,000,000 rubles. Additions from the

<sup>1</sup> *Organization of Banking in Russia.* By Professors Idelson and Lexis, *op. cit.*

<sup>2</sup> A ruble is approximately 52 cents.

profits raised the capital to 25,000,000 rubles and the surplus to 3,000,000 rubles. In 1894, provision was made for increasing the capital to 50,000,000 rubles and the surplus to 5,000,000 rubles, by setting aside annually a portion of the profits. The head offices of the bank are in St. Petersburg, and it had 107 branches in 1895.<sup>1</sup>

Previous to the establishment of the bank the government had greatly increased the volume of government notes, with the result that they had fallen below par.<sup>2</sup> At the organization of the bank in 1860, a practical separation of the banking and issue departments was effected. Since 1897 the issue department must hold a gold reserve of 50 % against the first 600,000 rubles of notes and 100 % against all notes issued in excess of 600,000 rubles. This practically authorizes the issue of 300,000 rubles of uncovered notes. No other bank may issue notes. In 1897 there were in circulation 1,068,780,000 rubles in notes. They are legal tender and redeemable on demand in gold.

The bank is purely a state institution under the direct control of the minister of finance. A council, a governor, and two deputy governors compose the central administration, while each branch has a committee to determine the amount of credit to be granted and the value of collateral. Profits go to the imperial treasury.

Perhaps the most striking service rendered to the state has been in connection with the resumption of specie payments through the energy of finance minister Witte. Since the latter part of the eighteenth century, Russia's paper money, issued by the government, had been below par. Steps were taken by Witte to increase the gold reserve. Beginning in 1897 the notes were made redeemable in gold, and assurance that gold redemption would be maintained was given by the provision of the reserve requirement stated above. Silver was put on a subsidiary basis by limiting its legal-tender quality, and by coining it only on government account. Silver was not to be

<sup>1</sup> Conant, *Modern Banks of Issue*, 3d edition, p. 244.

<sup>2</sup> In 1817, 100 silver rubles were worth 418 paper rubles. Levy, quoted in Conant, *ibid.*, p. 245.



counted as any part of the reserve against circulation. All notes not supported by the gold reserve have been withdrawn and Russia stands squarely on the gold basis.

In addition to the ordinary business of discount and deposit, the bank makes industrial loans based on mortgages on real estate or industrial plants, and on any other collateral which is deemed sufficient by the minister of finance. The specific purpose to which the loan will be devoted must be indicated by the borrower. Except in special cases, implements and machinery serving as security for a loan must be of Russian manufacture. The maximum credit extended to any individual industrial undertaking is 500,000 rubles; to owners of small workshops, 600 rubles. The amount of the loan varies from 50 % to 75 % of the value of the mortgaged property, while the time of the loan varies from six months to three years. Loans are also granted on manufactured products, bills of lading, etc., the time varying from three to fifteen months and the amount from 60 % to 80 % of the value of the security. Accounts current may also be opened on the deposit of securities, the depositor being allowed to draw up to a stated amount, paying interest only on the amount so withdrawn. Private individuals, railways, governmental bodies, associations of workmen, and credit institutions may act as intermediaries through which the bank extends credit, the intermediaries assuming liability for the sums advanced. In the extent and terms of credit granted to agriculturists and manufacturers, the bank is unique among state institutions. Loans are also made for the promotion of new enterprises "by virtue of special provisions." These loans had caused down to 1906 losses of 25,600,000 rubles. Since bank notes have been made redeemable in gold, the bank has been much more moderate in extending "loans by virtue of special provisions" and "industrial loans" as well.

Municipal banks have been in existence since 1789, but not until 1862 did their number exceed ten. Between 1862 and 1883, 215 were established. Since the latter date only 39 have been established, owing to the more rigorous supervision established at that time. The capital must be provided by the municipal assembly, and must not be less than 10,000 rubles. The

assembly elects the directors, none of whom may hold any other municipal office, or serve in any other credit institution. Statements are made annually to the assembly. A municipal committee examines the cash account every month. The government receives reports at stated intervals and may call for an examination at any time. The cash reserve, which includes credit balances with the Imperial Bank, must be 10 % of the total liabilities. There are also mutual credit associations which furnish credit to their members up to ten times the amount of cash paid in by each.

Private banks were not allowed until 1860. There are now 36 joint-stock banks operating under the law of 1883. The original capital may not exceed 5,000,000 rubles; the cash reserve, including credit balances at the Imperial Bank, must equal 10 % of the total liabilities; the liabilities may not exceed five times the capital. A surplus must be created from the profits, and at least one-third of this surplus must be invested in governmentally-guaranteed securities and deposited in the Imperial Bank. Unincorporated private banks are under the direct supervision of the minister of finance, who may at any time subject them to examination and forbid them to engage in lines of business in which abuses have occurred.

### III

#### THE BANKING SYSTEM OF JAPAN<sup>1</sup>

Modern banking in Japan dates from 1872, when a banking system based upon the national banking system of the United States was established. Large amounts of depreciated government paper were in circulation, hence bank notes were presented for redemption as soon as issued, thereby rendering note issue impracticable. In 1876 the government declared bank notes redeemable in government notes. Eight-tenths of the capital of the banks might be invested in government bonds; two-tenths must be held in government currency as a reserve. Notes might be issued to the extent of deposits. In 1877 the

<sup>1</sup> *The Banking System of Japan.* By Marquis Katsura, Baron Sakatani, S. Naruse and Dr. O. M. W. Sprague, *op. cit.*

government increased largely the issue of its own notes, which had an immediate effect on the exportation of specie. In the same year restrictions were placed on note issues by banks, and the redemption of government notes and bank notes was begun. In 1883 the right of note issue was taken from the banks and after 1899 no national bank was allowed to continue in business. They might continue, however, as private banks. By 1904 all government and national bank notes had been withdrawn.

In 1880 the Yokohama Specie Bank was established for the purpose of dealing in foreign exchange. It handles the loans and moneys of the government in its dealings with foreign countries, and is entitled to a loan of 20,000,000 yen<sup>1</sup> at 2 % from the Bank of Japan for the purpose of facilitating foreign trade. It also does business as an ordinary bank, while ordinary banks may also engage in foreign transactions. The bank is privately owned, but has for its governor the deputy governor of the Bank of Japan. It may not issue notes, except in Manchuria and China, where its branches may issue silver notes.

In 1882 the Bank of Japan was established on the model of the Bank of Belgium. It now has a capital of 30,000,000 yen and, alone among banks, may issue notes. The bank may issue up to 120,000,000 yen in notes based upon the security of commercial bills and national bonds, paying a tax of 1½ % per annum except when lent at an interest rate not exceeding 1 %. Notes may be issued to any additional amount when based upon an equal specie reserve, and additional emergency notes may be issued on permission of the minister of finance based upon approved bonds or bills. On this last class of notes, a tax of not less than 5 % per year is levied, the exact rate being determined by the minister of finance. The government appoints the governor, the vice-governor and the directors, from candidates chosen by the shareholders. Government inspectors may sit in the meetings of shareholders and directors. The bank manages the treasury receipts and disbursements without remuneration, and exercises supervision

<sup>1</sup> The value of the yen is approximately 50 cents.

over the Yokohama Specie Bank. It serves as the center for all the banking interests of Japan, and by its regulation of the discount rate controls the import and export of specie.

Private banks are organized under the law of 1890. They are placed under strict governmental regulations, whereas up to that time private banks had been free from government supervision. Savings banks are required to invest 25 % of their deposits in interest-bearing bonds.

The Agricultural and Industrial Bank with branches in every prefecture, and the Hypothec Bank, were organized under the law of 1895, for the special purpose of aiding the organization of industrial enterprises, by making long-time loans on the security of immovable property. The Industrial Bank, organized under the law of 1900, makes long-time loans on the security of bonds, shares, and movable property. It is a joint-stock company, privately owned, with its governor and deputy-governor appointed by the government.

The Bank of Formosa, privately owned for the most part, but with its president appointed by the Japanese government, was established in 1900 for the purpose of reforming the currency system of Formosa. The government supplied 1,000,000 yen of its capital, on which no dividend is to be paid for five years. It may issue 5,000,000 yen of notes free of tax, and has a five-year loan, without interest, of 2,000,000 yen from the government.

The Hokkaido Colonial Bank was founded in 1899, with a capital of 5,000,000 yen, to colonize and develop the island. A government official attached to the bank exercises strict supervision.

## GERMAN BANKS AND STOCK EXCHANGE SPECULATION <sup>1</sup>

CARL PARKER

University of Pennsylvania

### I

#### GERMAN STOCK EXCHANGE REGULATIONS

**D**IRECT governmental regulation of industry is carried much further in France and Germany than in England and the United States, the two latter countries preferring a lighter touch of the legal hand and a correspondingly wider activity of intelligent and aggressive public opinion. The regulation of the commercial exchanges is no exception to this rule. The French and German government authorities make many minute regulations which in England and the United States are made by the exchanges themselves. Government regulation is likely to produce harmful radical legislation which must be modified later, while private control is quite as likely to result in the tardy recognition of valuable reforms. It is a question of whether it is better to go too fast or too slow.

The difficulty an American finds in understanding German regulation arises from the fact that so many distinct official bodies are authorized to exercise supervision over the exchanges. First, the imperial government, consisting of the Reichstag, the Bundesrat, and the imperial chancellor, enacts the general exchange law. Under this law the state governments exercise supervision over the exchanges, notifying offices, clearing banks, clearing associations and similar institutions connected with the exchanges. This supervision may be entrusted to commercial organizations (the chambers of commerce and commercial corporations). The states are repre-

<sup>1</sup> Based largely on the publications of the National Monetary Commission relative to the German banking system. (Senate docs. 407, 408, 507, 508 and 574, 61st Cong., 2d sess.)

sented on the exchanges by commissioners, who control, in accordance with detailed instructions given to them by their governments, the transactions on the exchange, and enforce the laws concerning them. They are also required to report all abuses on the exchange and to suggest preventive measures.

An expert exchange committee of the Bundesrat is formed with the purpose of reporting upon matters within the jurisdiction of that body. This committee is authorized to tender its motions to the imperial chancellor and to consult with experts. It consists of not less than 30 members, elected by the Bundesrat for a period of 5 years, one-half of them upon nomination by the exchange, the other half being chosen with special relation to the needs of agriculture and industry. The Bundesrat issues regulations for the purpose of securing uniformity in the fixing of prices of merchandise and securities and determines the minimum amount of stock, as well as the minimum amount of the face value of each share necessary for the listing of the shares on the particular exchange. It also defines the duties to be discharged by the board of admission, and makes provisions concerning the requirements for the listing of securities on the exchanges.

Under the provisions of the imperial law, the government of Prussia entrusted the right of direct supervision over the Berlin exchange to the Berlin Chamber of Commerce. That body therefore in 1908 drew up a body of regulations for the Berlin exchange, which were approved by the Prussian minister of commerce and manufacture, and became binding on the members of the exchange. By virtue of a former national act, the Prussian state in 1908 had ordained some thirty-eight provisions concerning brokers on the Berlin exchange, and by authority of a still earlier national act the Bundesrat in 1896 announced fifteen rules for the listing of securities on exchanges. Thus the broker on the Berlin stock and produce exchange must obey the regulations made for all exchanges by the federal government, then the general and particular regulations made by the Bundesrat, then the regulations of his own state government, and finally the provisions of the Berlin Chamber of Commerce.



The national act of 1908 provides that the listing of securities on each exchange shall be by an admission committee, at least one-half of whom must be persons not dealing professionally in securities on the exchange. If an application for listing is rejected by a board of admission for other than local reasons, the securities cannot be listed upon another exchange without the consent of the board which refused their listing. In case of securities open to public subscription, no official fixing of the price may be declared before the closing of the subscription, and no negotiations may be made on the exchange. Neither may the prices be quoted by the brokers or published in any other way.

The right of future dealings in securities may be granted only when the aggregate nominal value of the securities reaches a minimum of about \$4,000,000 (20,000,000 marks). Future dealings in shares of a domestic industrial enterprise may be transacted on the exchange only with the consent of the company. They are binding only if both contracting parties are "merchants" who are entered in the commercial register or whose registration is not required, or if both parties are registered associations. This does not include small traders. "Merchants" are persons engaged in the banking business or in future dealings on the exchange, as well as those who hold the permanent right of admission to the exchange and those who have neither domicile nor business establishment within the country. Future contracts for farm products are valid only when made by producers or by merchants or registered associations trading in farm products.

The Berlin Chamber of Commerce provides for the administration of the exchange by a board of 36 directors, 9 of whom must be elected by the Chamber of Commerce from among its members, and 27 by the members of the exchange from among their own numbers, 15 from the stock-exchange department, and 12 from the produce-exchange department. In addition, on nomination of the board of agriculture, 5 representatives of agriculture and allied industries are elected, who participate in meetings of the board of directors dealing with matters concerning the agricultural trade. This board of exchange directors

has supervision over the exchange, subject to the regulations of the several superior powers.

The most minute restrictions upon the Berlin broker are those made by the Prussian state government. Brokers are appointed by the lord lieutenant of the province of Brandenburg and the city of Berlin, upon whose order the state commissioner at the Berlin exchange administers an oath binding the broker to discharge faithfully the duties incumbent upon him.

After being sworn in, the broker receives a certificate of appointment issued by the lord lieutenant. Each broker is required, except under special circumstances, to recommend a deputy to represent him during leave of absence, or in the event of his being hindered by illness from attending to his duties. He must attend and sit through all the exchange meetings unless granted leave of absence. He may act as business agent only for those exchange visitors who are in possession of a card entitling them to conclude transactions upon the exchange. He must enter daily in his daybook and over his signature all transactions which he has concluded for his own account, as well as the guarantee assumed by him in connection with transactions concluded through his agency.

The regulations of the clearing-house association and the clearing bank are similar to most clearing-house requirements. In order to realize the purpose of the association, each member is required, even when he has no balance of securities to deliver or receive, to present to the office an account of his transactions in securities concluded during the last month with members of the exchange. Any member who fails to submit his balance sheets at the fixed time, even when he has no securities to deliver or receive, is subject to a fine of not over 300 marks for each sheet which is missing, or has not been submitted in due time.

## II

### RELATION OF BANKS TO SPECULATION

German legislation made no sweeping reorganization of the exchange. Many of the old customs were used as a basis for the new laws, and most of the essential features of the former

organization were retained. Many important restrictions of old practises were made, however, and the close supervision exercised at present has greatly cut down the freedom of action of past days. Formerly, any one was admitted on payment of a small fee, to trade on the exchange for his own account or as a broker. Now the persons having this right are specified by law. As in former days, there is no limit to the number of members.

The banks are the most important members of the exchange in Germany. They pay a small annual tax, and are members by virtue of being banks. The Deutsche Bank, for instance, has 50 members on the stock exchange, the Dresdner Bank has from 20 to 30. There are no brokerage houses as in New York. Persons desiring to buy stocks or bonds go to their banker for information and purchase or sell securities through him upon such terms as may be agreed. These terms range from no margin at all, where the customer is known to be good for a certain amount, even when he desires to purchase for speculation, to 50 % or more margin in other cases, depending upon the man and the security. Usually a margin of from 20 % to 40 % is required.

In the majority of cases, there is only one quotation per day. This applies to all bonds and most mining and industrial shares. At a certain hour speculators go to the official broker, who determines the price of securities for the day, and they are settled for on the basis of that price.

The banks of Germany are the great promoters of all kinds of enterprises, and take great pride in the success of operations which they undertake. Consequently, having gained the confidence of investors to a high degree, the German banks are in an unequaled position to develop and launch big corporate enterprises. They commonly use, for the development of enterprises, the deposits of those to whom the shares are afterwards sold, and vote thousands of proxies entrusted to them by their shareholder-depositors. They have also the custody of the securities, the Dresdner Bank in 1909 having \$400,000,000 worth in its vaults.

The banks thus have both the oversight of many enterprises,

keeping in many cases a representative on the board of directors, and the necessary connection with the stock exchange, so that they are exceedingly strong in the financial councils of Germany.

The general banks of Germany may be divided into three classes, the note-issuing banks, the joint-stock or credit banks and the Reichsbank. Of these the second and third are of overwhelming importance. There are 421 credit banks, of which eight large Berlin banks control a capital of some \$2,000,000,000, or about 74 % of the entire capital controlled by the whole number.<sup>1</sup> The Reichsbank has a capital and surplus of about \$58,000,000 and on account of its position, has an influence far exceeding that based on its money power alone. It is these two factors that control largely the speculative world in Germany.

The Reichsbank may make loans on collateral of the following character:

1. Gold and silver—up to their full value.
2. Government and municipal issues; shares, debentures and bonds of railroads of nearly every kind within the empire—up to  $\frac{3}{4}$  of their market value.
3. Securities of foreign governments, also railroad securities in foreign countries when guaranteed by their respective governments—up to  $\frac{1}{2}$  of their market value.
4. Satisfactory bills receivable.
5. Bonds of mortgage companies.
6. Merchandise, when located within the empire—up to  $\frac{3}{4}$  of its market value.

The Reichsbank is forbidden by the bank act to do a *contango* business, or to issue notes on the basis of lombard loans, as the above-mentioned loans on collateral are called. Consequently the bank finds it desirable to keep down lombard loans and to build up its discounts of commercial and bank paper upon which its circulation (above the  $\frac{1}{2}$  covered by cash) is based. This it does by charging 1 % more for such loans than the ordinary discount rate, and by limiting the total amount of

<sup>1</sup> *Miscellaneous Articles on German Banking* (Sen. doc., 508, 61st Cong., 2d sess.), p. 91.

advances. The bank also requires that the loans granted a debtor be not disproportionate to his means, that he have a spotless reputation, and that all doubts be cleared up regarding his ownership of the pledge. Loans are made (in so far as possible) only to persons who are not likely to contemplate speculating. Loans are not granted to foreigners. In December 1907, bills discounted amounted to over \$356,001,955, while lombard loans were \$86,702,816.

According to the statistics for 1910, 40.6 % of the amount of these lombard loans outstanding was made to banks and bankers. Thus, while the credit banks are not restricted by law, they find it to their interest not to invest too freely in loans which are not rediscountable at the Reichsbank; inasmuch as this great central institution is depended upon to carry them through periods of crisis and tight money.

About 10 % of the total funds of these banks is invested in lombard loans, and about 50 % on an average is given over to "debit accounts." The greater part of these "debit accounts" is made up of overdrafts secured by listed securities, hypothecary obligations and sureties of third persons. The stipulated margin on the quotation of the day varies with the quality of the paper. In case of a decline of prices, the margin is maintained either by an increase of the deposit or a reduction of the credit balance. These secured debit accounts originate not merely through the extension of bank credit,—which, in turn, is secured by the deposit of securities and other valuable paper—but more often through speculative transactions connected with the issue and security brokerage business of the banks. The average margins on the market value ordinarily demanded are as follows:

German securities bearing a fixed rate of interest . . . . .	10 %
Foreign securities bearing a fixed rate of interest . . . . .	20
Domestic stock shares . . . . .	25-33½
Foreign stock shares . . . . .	25-50

As regards the balance, the client becomes the debtor of the bank, and these credits are booked in the balance sheet as debit accounts secured by valuable paper.

These loans merely take the place of former loans made to industrial enterprises on the strength of stock shares and bonds taken over by the banks. The banks subsequently sell them to the public by crediting them with part of the purchase price.

The lombard loans on collateral include besides advances on merchandise and securities (usually for one month), the so-called reports. The total amount of the latter, however, is not large; it has shrunk particularly since the passage of the stock-exchange law restricting trading in options. The essential feature of this class of business is that the bank buys speculative securities at the price quoted on the exchange on the date of purchase and sells them back to the client at the same price on the subsequent date of settlement. As the interest rate for "report" money as a rule is higher than on loans proper, this sort of business is very lucrative. It is also regarded as one of the most solid credit transactions, since it is done exclusively with houses of undoubted standing, and in readily negotiable securities.

The rate of interest charged by the joint-stock banks is normally more or less below the Reichsbank rate. The rate on prime bills is usually the lowest, stock-exchange loans ranging a little higher and other loans and discounts following.

From 1844 to 1909 the highest points reached by the discount rate of the Reichsbank and its predecessors have been as follows: 9 % in 1866, 8 % in 1870,  $7\frac{1}{2}$  % in 1857, and from November, 1907, to January, 1908; while the minimum rate has not fallen at any time below 3 %.



PROCEEDINGS OF THE MONETARY CONFERENCE HELD  
IN NEW YORK, NOVEMBER 11 AND 12, 1910

The thirtieth annual meeting of the Academy of Political Science, held in New York on November 11 and 12, 1910, was made the occasion of a National Monetary Conference on the work of the National Monetary Commission. It was conducted with the coöperation of the New York Chamber of Commerce and the New York Merchants' Association. The members of the National Monetary Commission were the guests of honor, attending the sessions of the conference in a body. Delegates were appointed by the governors of the following states and territories: Vermont, Rhode Island, Connecticut, New York, Pennsylvania, Delaware, Maryland, West Virginia, North Carolina, Georgia, Florida, Mississippi, Louisiana, Texas, Illinois, Wisconsin, Minnesota, Iowa, Colorado, Montana, Arizona, and New Mexico. Delegates were also appointed by twenty-four chambers of commerce and other commercial organizations. There were also present a considerable number of economists and students of monetary affairs, together with representatives of many of the most important banks in New York city and elsewhere.

Three sessions of the conference were held at Earl Hall, Columbia University. Professor E. R. A. Seligman presided at the first session; Albert Shaw, Vice-President of the Academy, at the second; and Professor Samuel McCune Lindsay at the third. The program was as follows:

FRIDAY, NOVEMBER 11

First Session: Bank Assets and Sound Currency.

American Banks in Times of Crisis under the National Banking System, by E. W. Kemmerer

Bank Notes and Lending Power, by J. Laurence Laughlin

Discussion

## Second Session : Currency Reform and Business Stability.

Lessons from the Bank of England, by Joseph French Johnson

Currency Reform from the Business Man's Standpoint, by Irving T. Bush

Discussion

SATURDAY, NOVEMBER 12

## Third Session : Proposed Changes in our Monetary System

Principles that must Underlie Monetary Reform in the United States,  
by Paul M. WarburgThe Transition from Existing Conditions to Central Banking, by  
Charles A. Conant

Discussion

## ANNIVERSARY DINNER

The anniversary dinner of the Academy was held at the Hotel Astor on Friday evening, November 11th, Mr. A. Barton Hepburn, President, presiding. The subject for discussion was "The Need for Currency Reform." Addresses were delivered by President Nicholas Murray Butler, of Columbia University, Professor Leo Stanton Rowe, President of the American Academy of Political and Social Science, Senator Nelson W. Aldrich, Honorable A. Piatt Andrew, Jacob H. Schiff, Honorable George E. Roberts, and Professor J. Laurence Laughlin.

The conference came to an end with a reception on Saturday afternoon, November 12th, tendered to members of the Academy, official delegates and guests, by the president of the Academy, Mr. A. Barton Hepburn, and Mrs. Hepburn.

The papers read at the sessions are printed elsewhere in this volume (see pages 225, 233, 254, 376, 389, 397). The discussions and the addresses at the anniversary dinner are found in the following pages, except the address of George E. Roberts, Director of the Mint, which is printed at page 358.

## DISCUSSION. FIRST SESSION, FRIDAY MORNING

The discussion at the first session was opened by Mr. George M. Reynolds, President of the Continental and Commercial National Bank of Chicago. Mr. Reynolds pointed out that rediscounting is almost impossible under our national banking system. The practise should be

stimulated, he held, under proper conditions. To a considerable extent the local banker, through his control of credit, holds in his hands the industrial destiny of his community. His ability to get credit through rediscounts should be considered a sign of strength rather than weakness. The present problem is not note issue, but flexibility of credit. For this reason Mr. Reynolds favored reform legislation. The bankers, he said, should join in a campaign of education in favor of the idea. In passing, he defended the character of American bank assets as compared with those abroad.

MR. ARTHUR REYNOLDS, President of the Des Moines National Bank :

I hesitate at this time to make any suggestions at all upon the subject, because I am not in a position to speak for the American Bankers' Association. We have been awaiting the report of the National Monetary Commission, and we desire to coöperate with them in securing some adequate law. However, I might suggest one or two things which seem to me very important.

Most vital of all is the maintenance of the individuality of our banks. We must not establish any institution which will circumscribe their powers to do business or will tend to eliminate them. The great progress of our country has been due in good part to the work of our independent banks. Local banks have accumulated funds for the development of local enterprises. In other countries, through branch banks, deposits are forwarded largely to parent institutions in large cities, at times to the detriment of smaller places. I believe that our individual banks are worthy of a permanent place in the financial affairs of the country.

If a central bank is to be organized, it is desirable that the subscriptions to its capital should be open to all national banks in some proportion to their capital, or that some other plan should be provided to prevent its being controlled by any large moneyed interest. Coming as I do from the country, I am familiar with the objections that are raised to any form of central institution and to any plan of currency reform which does not contemplate giving country banks an equal privilege with city banks in the issue of credit currency. Without this privilege, I am positive that country banks will oppose legislation. We must devise a plan which is correct in theory, and which will command the confidence and support of the banking and business public. To command such support, the plan must be beneficial to all banks, large and small alike. We must be careful not to urge legislation favoring any particular class of banks.

The national-bank act should be broadened and liberalized to give the national banks of the country better facilities to compete with other kinds of banks. State institutions have grown up under state laws, which in many states treat them with great liberality. We should amend the national-bank act to enable our banks to handle all kinds of desirable business and thereby meet competition.

DISCUSSION. SECOND SESSION, FRIDAY AFTERNOON

MR. JAMES B. FORGAN, President of the First National Bank of Chicago :

I wish to make one essential point. I came to this country after a long banking experience in Scotland and Canada, and found the discussion going on the same as at present about our national banking system and our currency. I jumped into the arena at once, advocating branch banking in this country ; but I found that it was not American, and I discovered that probably I was not enough of an American at that time really to understand the situation. And I am not sure that I understand it now. I am a student and back again in the class of students ; my mind is open. I am willing to give any assistance that I can in the practical detail of a new system, but I am looking to the students who have time to study, the professors of political economy and now the Monetary Commission, to evolve the proper principles of such a system. We practical bankers can be of assistance in working out details. Whenever you hear a professor of economics or any other student of this subject pass over some point and say, " Oh, that is just a matter of detail," you just mark it that that is the point that he does not understand ; it is there that the banker can help, because banking is one mass of detail from beginning to end ; and if we bankers don't know something about detail, we don't know anything. As bankers actually engaged in the details, in settling one thing after another as it comes up, in thinking about what we are doing without looking around us much, we may go wrong in principle, we may run counter to some economic laws that will check us in our work, and we may afterwards discover that we have made some great mistakes. That is where the students of political economy after a study of the general effects of our individual actions may come in to put us right.

I think I have indicated the attitude of the American Bankers' Association, that they want to be helpful. Let the theorists, those who are not actively doing work but who can study from past history and from present conditions the effect of what we are doing, lay down principles for us, and then let us help them with the details.

EDWARD D. PAGE, of Faulkner, Page & Co., New York :

This problem is one of diminishing the cost of production. One of my classmates showed Andrew Carnegie that he could produce three times the amount of pig iron formerly produced, at a cost of less than half the previous one. The one step that he took eventually diminished the whole cost of producing pig iron throughout the United States, and enabled Carnegie so to outdistance his competitors that he was able to capture a very large proportion of the trade of the country. When J. P. Morgan consolidated the large steel concerns he took another step in diminishing the cost of production and put our steel industry on a basis where it could compete with the world.

One need of the industries of this country is equal financial facilities for competing with the rest of the world. One of our present disabilities is the great cost which American manufacturers and merchants are under because of great fluctuations in the rates of interest due to undue expansion of credit at one time of the year, and undue contraction at another.

The next point is the scattering of the enormous reserves carried by our banks, so that they do not produce the psychological effect that they would produce if brought together into one pool.

The next is the friction which is involved in the bad handling of both domestic and foreign exchange. In other words, there is a necessity for our developing methods of obtaining moderate and fairly stable rates of interest, and moderate and fairly stable rates of exchange. Otherwise we cannot compete on an equal footing with our foreign competitors. I have often seen the time when the difference in the rate of exchange alone would throw an order for cotton goods from our southern cotton mills to Manchester. We are today at times in dealing with South American countries obliged to do our entire business for the year within a month, that being the only time when the rate of exchange will permit us to sell goods so that they can be retailed in those foreign countries at prices at which they are able to buy. During the rest of the year it is absolutely impossible to do business because of the exchange rates which fluctuate from thirty to forty per cent. Of course that is a great deal worse than the rates of exchange that we are compelled to consider in our dealings with Europe.

Approaching this subject as I did with certain prejudices against centralization and in favor of individual action and initiative, I have come to believe that the currency problem of the nation is not a matter that can be trammelled by such prepossessions, and I have been gradually converted to the belief that a central bank can perform an

important and necessary function in lowering the cost of production, just as was done in the illustration which I quoted. In the first place, it could concentrate reserves; in the second place, handle the exchanges; and in the third place, control the flow of gold to and from this country by reason of its power over foreign exchange, investing in foreign exchange at certain times and selling its own exchange at other times. I am therefore heartily in sympathy with the efforts being made by the Merchants' Association to popularize the thought that such a bank, if free from political control and free from control by selfish interests, could perform these functions in a way to help along the industries of the country.

ALEX. DELMAR, New York :

After listening to the eloquent address of Professor Laughlin of Chicago University, I have become a complete convert to his views. He contends that the government of the United States should have no concern with money; that the "national" banks should be empowered to control entirely its issue and retirement; that their privilege to pursue the lucrative vocation of advancing money on pledges should not be hampered by usury laws or other regulation. This appears to be the mysterious "detail" which, to-day, Mr. James B. Forgan, president of the First National Bank of Chicago, intimated was quite beyond the comprehension of ordinary people. According to Professor Laughlin's political economy, even the right of the government to tax the exorbitant profits of the banks should be destroyed or curtailed; so that, to repeat the significant words of Mr. George M. Reynolds, president of the American Bankers' Association and adviser to the National Monetary Commission, the "national" bankers may "hold in their hands the destinies of the entire people". In all of these patriotic and generous sentiments the measure of my recent conversion compels me to join heartily.

I notice, also, with the zealous eyes of a newly found faith, that the full-length statue of Augustus Caesar graces this hall; for it was he who took from the Commons and the Senate of the Roman republic the power to issue money, so that the stamp of *Senatus consultum* no longer meant "with the approval of the people and their representatives," but only with the approval of the deified emperor who had usurped their power.

So much for my present converted views. Now for my former and mistaken ones; the beliefs which appear in my works on money and which I ventured to entertain before I listened to the persuasive arguments of Professor Laughlin. These ancient beliefs I now renounce



with contrition. I surrender them to the future writers on money. I shed with them the regretful tear of a controverted penitent, a victim to Professor Laughlin's seductive political economy.

I used to believe—I am almost afraid to confess it, for it is becoming heretical—I formerly believed, that money was an institute of law, designed to measure value and facilitate exchange, that the control of its symbols, such as coins and notes, was of necessity a royal or state prerogative, as laid down in the digest of the Roman legal decisions; in the forensic essays of Budelius and Grimaudet; as decided in 29 Edward I and 7 Edward VI, also in the great Mixt Monies case which was adjudicated in 2 James I; and as is still retained in the effete constitution of the United States of America. In these ancient archæological charters of a time when there was a scarcity of political economists and "national" banks, money issue was held a part of the regalia, which no sovereign state could surrender without loss of autonomy. You will also find these misplaced principles of government laid down in James Neckar, who was the finance minister of Louis XVI; in Henry Thornton, a distinguished member of the British Parliament, whose treatise on the subject is one of our classics; in J. R. McCulloch (not our late Secretary McCulloch); in John Stuart Mill, with whom I had the honor to discuss this very subject; and in the writings of other juriconsults. I used to share these antiquated views; but now I renounce and abandon them to their wretched and deserved fate. I once ventured to believe that money being a measure of value, and susceptible, like other measures, of being limited by law, it could and should be and was employed to measure the value of commodities, for example, wheat. I believed that it was money that measured the value of wheat, just as the bushel measured its bulk; but now, following Professor Laughlin, I believe that value measures money, that wheat measures the bushel, that the unlimited measures and should measure the limited; and that, following President George M. Reynolds, the "national" banks' asset currency should measure the "destinies of the American people." Yea, the joy of conversion is sweet, and none can share or imagine its delights until after he has listened to a few modern, up-to-date, politico-economical discourses on the advantages of "national" bank supremacy.

MAURICE L. MUHLEMANN, New York city:

I want to put in a few words in defense of the emergency currency law, which Professor Laughlin this morning left in a "frazzled" state. While I regard the Aldrich-Vreeland law as a mere temporary expedient, or stepping-stone in the direction of the central-bank plan, which

I have advocated for years, I want to put upon record my disagreement with some of the important conclusions contained in Professor Laughlin's admirable paper.

As he pointed out, when monetary troubles are upon us, there are two classes of people to be considered: those who must have actual cash for their daily business (as for payrolls), and all others, who do not require actual cash, but must have credit.

It does not matter what kind of cash is supplied to those who need it; silver dollars are as good for their needs as legal tenders, and bank notes are as serviceable as gold coin. The Aldrich-Vreeland law in making provision for the issue of additional bank notes supplies the need. Banks may by such issues conserve their reserve cash and thus be in better position to meet the demands of those who need credits.

If there is a call on the city banks for cash to move the crops, they need not remit reserve money, but can send the bank notes which under the law they can obtain upon the deposit of their securities and commercial paper. Such notes are as satisfactory for the purpose as would be reserve money, and the city banks save their reserve money.

Professor Laughlin praised the system of clearing-house loan certificates. The emergency-currency law is merely an extension thereof; the loan certificates are issued on a bank's negotiable instruments to furnish means for those whose needs do not call for cash; the law provides that the same class of assets may be used to furnish cash for the needs of the others. It is obvious that in times of apprehension, the latter provision is equally important to avert a panic.

Furthermore, these notes are also available in a measure to provide for those who do not need cash; bank notes serve as reserve money for state banks and trust companies, whose aggregate deposits and resources to-day are nearly as large, if not quite, as those of the national banks. For this vast amount of deposits the emergency notes, as well as other bank notes may be used as reserves, thus further strengthening the general status of the banks.

Professor Laughlin appears to have overlooked these features; and, whatever else may properly be said in criticism of the Aldrich-Vreeland law, I feel that it is only fair that these facts appear in the record.

WALLACE P. GROOM, Brooklyn:

European financial methods cannot wisely be accepted as a pattern for us. The privately-owned banks of England and France and other kindred institutions of Europe operate (at home) chiefly with and for people of the creditor class. The United States is most unfortunately a debtor nation. During the twenty years from 1890 to 1909 our ex-

ports exceeded our imports by the colossal sum of seven billion dollars ; yet our indebtedness abroad continues to be enormous. What is the reason? Is it not due to excessive interest charges on our foreign debts and the oft-repeated, though indirect, renewals thereof? European interest rates as compared with ours are moderate, and our excessive interest rates make it difficult to compete successfully, other things being equal, with other countries. Money with interest added according to the practise of savings banks for 100 years at six per cent will amount to seventeen and a half times as much as at three per cent. Hence the great need of wise and equitable currency adjustments by the government which will surely maintain (not by "usury laws") a just rate of interest to the great benefit of lenders as well as of borrowers. This result could be accomplished by discarding the use of merchandise as a pretended standard measure of values.

In conclusion, let me quote from the *New York Mercantile Journal* under date of July 5, 1865 :

"In the interchangeability (at the option of the holder) of national paper money with government bonds bearing a fixed rate of interest, there is a subtle principle that will regulate the movements of finance and commerce as accurately as the motion of the steam engine is regulated by its governor. Such paper-money tokens would be much nearer perfect measures of value than gold and silver ever have been or ever can be. The use of gold or other merchandise as money is a barbarism unworthy of the age."

MR. WILLIAM FREDERICK DOLL, President of the American Monetary Association, New York ;

Why should money not be issued by the national government on the same principle that we issue postage stamps, that is, direct to the people? Money should be issued and loaned upon real property up to twenty-five per cent of its assessed or market value, and to the municipalities upon their bonds. New assessments would be made every four years. This would free the people from the yoke of the bankers, the usurers and the trusts ; it would for the first time make a democracy possible. A postage stamp is a medium of exchange which insures two cents worth of postal or government service. Media of exchange called money are manufactured in the same way as a postage stamp, by legislation. Then why should not New York city and other municipalities borrow this money direct from the federal government in place of paying several hundred and often several thousand per cent profit to bankers? If that were done money would be at the same rate of interest throughout this country, and you would not, as today, see

part of the people paying two hundred per cent interest for the use of a medium of exchange that the bankers through special legislation borrow from the federal government at a half of one per cent.

Money is very cheap to the national bankers, but it is not to the people ; and money, being a medium of exchange like a postage stamp, should be equally accessible to all the people, if we are to have a democratic country. The Aldrich-Vreeland bill, permits the lending of money to banks upon municipal bonds. Why should not New York city borrow its money direct? Surely a national banker's signature to a New York city bond does not improve the bond ; then why pay the bankers hundreds of millions of dollars for that signature?

DISCUSSION. THIRD SESSION, SATURDAY MORNING

C. STUART PATTERSON, President of the Western Savings Fund, Philadelphia :

I have no word of criticism for that which has been said by Mr. Warburg, with his accustomed force and earnestness. Indeed, he has expressed the view which is held by all those who have most thoroughly studied this subject. The more anybody does study it, the more certainly will he come to the conclusion that there is no practicable and final solution of the problem other than the adoption, in some form or other, of a central agency which will bring together in one reservoir that great reserve upon which depends the stability of our financial institutions. It seems to me that Mr. Warburg has also dealt in a very practical way with the various difficulties which must be encountered in perfecting this scheme, and also in securing for it popular support.

We are practical men, and we want something done. We have been wanting something done for a long time, but it is not going to be done to-day. No man conversant with the practical details of legislation can bring himself to believe that in the short session terminating on the fourth of March next it will be in any way possible to put through any bill upon this subject, even though those who are framing the bill could be brought to an agreement, and though the requisite popular support could be obtained. Nor will any such man believe that it would be practicable to do that at the next session, with a presidential campaign impending, and with both parties fighting for advantage,—but it ought to come soon after that. In order that it may come, it is necessary not only that the ordinary work of education should go on ; it is necessary not only that there should be addresses in every part of the country, and that every effort of that sort should be made to influence public opinion ; but it is necessary also that something more definite, and more practical still, should be done.

If we want legislation there is one practical way in which we can get it,—and on this very subject I once had a little experience that I may be pardoned for referring to. After the meeting of the Indianapolis Monetary Commission I went with Senator Edmunds and ex-Secretary Fairchild, as a special committee appointed by the commission to talk to President McKinley about the practicability of getting a positive and unmistakable declaration upon the gold standard. He sent us to Speaker Reed, who received us courteously, and said, "Gentlemen, you do not expect us to put this bill through? It is not possible to put it through." We went home and organized an aggressive and active movement. Mr. Hugh Hanna established headquarters in Indianapolis, and sent from there not circulars, but letters personally written to carefully-selected men in every congressional district in this country. When we went back to Speaker Reed, he said, "Why, there seems to be a popular demand for your bill; every member in the house has been to see me and talk with me about it, and they all say they are getting letters from their constituents." In consequence there was put upon the statute books of the United States a positive and clear declaration in regard to the gold standard.

That is just what you must do in this case; you must uphold the hands of Senator Aldrich. You have got to see that the bill which he formulates—and which will be the right bill—that the bill obtains the support of every part of this country. When that thing is done we shall have a financial system in the United States of which we shall have reason to be proud, and any man who has played any part, however slight, in connection with that great work, will have reason to congratulate himself upon having done it.

PROF. DAVIS R. DEWEY, of the Massachusetts Institute of Technology.

In the past two years, since the question of the central bank has come to the front, we have made considerable progress. I was much pleased with the first paper, to say nothing of the second, in that so much emphasis was placed upon the two points of the fluidity of the reserve and the extension of credit, rather than on note issue.

It would be presumptuous for me to give any advice to the Monetary Commission, but it seems to me that the further they can keep from the question of note issue in any proposed plan the more likely they are to obtain success. The people, as a rule, are not particularly interested in banking questions other than note issue. The great questions which have involved controversy in our banking history have centered very largely around that particular function.

With regard to the reserve, the people care but little, and you can



secure, I believe, with comparative ease, what legislation you wish. As to making our credit more fluid by securing a system under which paper can be rediscounted more freely, by which a larger use of bills of exchange can be introduced—if legislation be necessary for that, I believe it can be obtained.

The literature which the commission has published, so far as I have read it, has emphasized this conclusion, that the success of foreign banking, and particularly of English banking, has been in administration rather than in law. If there is one thing that Mr. Withers brings out more than anything else in his monograph on *The English Banking System* it is the absence of restriction. The absence of law has contributed to the development and success of British banking. If we can free our banking system of some of its shackles, so that greater responsibility may be placed upon the banker and greater opportunity given him, we are likely to advance further than by making any new, rigid system.

I hope, therefore, that the commission, if it finds that it cannot secure a reasonably unanimous agreement upon a plan involving note issue, will throw that point aside, and devote its efforts to the two questions of reserve and the extension of credit through a wider use of credit instruments. With these two things alone, even if note issue were left where it is, we should make a great gain in our banking system. Other reforms must come, doubtless, because changes must be made in our bond-secured note issue with changes in the public debt, but such reforms can come later.

The people, I believe, will not be willing to leave to Mr. Warburg's central board of control, who have charge of the central reservoir, the power also to control the auxiliary reservoir, without a very definitely prescribed set of rules as to what they are going to do with it. The advantage undoubtedly would be very great, but so far as I can learn from the paper, it is proposed to leave to the central board discretionary power as to the amount of this currency to be issued by the central board, to supplement the bank-note circulation.

Nor did I observe from the scheme any very definite plan with regard to redemption. Of all the various features of our banking system that have evaded adequate discussion, the question of redemption is, it seems to me, the most important. If, as the speakers last evening thought might be possible, you are to keep this bank question, with that of bank-note circulation, out of politics, you must see that undue inflation does not occur. Every other system of banking with which comparison has been made has an effective system of redemption; but



we have independent banks, and no definite proposal has been made whereby notes will be redeemed as they are issued. I am afraid that the speakers of last evening were a little too optimistic in thinking that you can keep the money question out of politics. It has not been out of politics very long, and if we study political history we find an inclination on the part of those who shape political issues—call them demagogues, if you will—to divert the attention of the people from other issues to this issue.

MR. LEWIS E. PIERSON, President of the Irving National Exchange Bank :

Meetings similar to the one you are holding here have in the last few years been held in practically all of the several states by associations of bankers. At these meetings there have been discussions on asset currency, branch banking, a central bank and the necessity for monetary reform.

As an evidence of the educational value of these discussions I might say that about eight years ago I attended a joint convention of the Missouri and Kansas bankers which was addressed by Mr. James K. Eckels, former comptroller of the currency. His audience was hostile in every sense of the word. This last summer the Kansas Bankers' Association, made up of the same bankers who listened to Mr. Eckels' address, and who were so hostile at that time, passed a practically unanimous resolution favoring the organization of a central bank as the best medium by which we can better the banking and currency situation in our country. Educational work among bankers is still going on, as we keenly recognize how vitally important it is to arrive at the best possible banking and currency system.

It seems to me that the work you are doing here is of great importance, and should be as widely known as possible, and the thought naturally occurs that as there are so many journals published by business men's organizations throughout the country, your proceedings might be distributed to these journals, and through them, brought to the attention of their members. When these members realize the necessity for action they will see to it that this great question is not made a partisan matter in congress, and, as soon as Senator Aldrich and the Monetary Commission formulate their plan, the influence of these business men will be behind the proposition and will aid in securing its enactment.

JOHN MARTIN, of New York :

I agree with Professor Dewey that it is quite utopian to hope that the settlement of this question will be non-political, even if partisanship

be to a great extent eliminated. The people of the United States, more than any people in Europe, have insisted upon having a voice in the settlement of almost all questions hitherto, and it is vain to hope, I think, that they will be persuaded now to leave this one entirely to experts. Therefore it is essential that the popular features of such a scheme as Mr. Warburg so ably outlined this morning shall be emphasized. His plan, which I take it demands and secures the support of most of the experts in its main outlines, fortunately also contains features which will appeal to the non-experts, the populace.

For example, his insistence that loans shall be to a large or to a much greater degree based upon commercial paper, and that loans on Wall-street stocks shall be diminished, would recommend that scheme, I think, very widely. We all know, and we may as well accept it, that there is a strong sentiment—call it prejudice, if you will—throughout the country, against what is called Wall-street influence, and if, in connection with that scheme, it can be fairly understood that loans on Wall street are to be superseded to a great extent by loans based upon commercial paper, undoubtedly the popularity of the scheme and its chance of acceptance will be greatly improved.

The people are naturally very jealous, and properly, I think, of any proposal by which governmental power of any sort or the power to make large profits on a kind of governmental privilege shall be conferred upon a private corporation. But, if it be clearly understood and accepted by the banking authorities that the central-reserve institution shall under no circumstances take more than four per cent profit, and if it is further understood that the profits which may be made will go into the public treasury for the common good, a large measure of support will be won for the scheme that would not be otherwise forthcoming.

In connection with that I would suggest that perhaps popular opposition might be still further avoided without impairing the safety of the scheme at all by eliminating the idea of the government's guaranteeing even four per cent. Is it not sufficiently certain that the four per cent would be earned to make it unnecessary to weight this scheme with a government guarantee, which would undoubtedly incur popular opposition? Would the safety be in the slightest impaired? Could not experts agree upon that without government guarantee? If so, is it necessary to invite the popular opposition which would certainly rise against a government guarantee even of that kind for the capital of the reserve institution?

Another question I would raise about Mr. Warburg's scheme, so ad-

mirable in its outline, is as to whether it would be wise to insist, as he seems disposed to do in just two or three sentences, upon the abolition of the independent treasury system and the deposit of all government funds with the central reserve institution. Would it not be sufficient to do as a speaker yesterday suggested, determine the maximum necessary for the treasury and sub-treasury to hold for the conduct of their business, and simply insist upon the deposit with the central reserve bank of the surplus beyond that maximum declared necessary for the treasury business carried on day by day? Undoubtedly the abolition of the treasury system will excite enormous opposition. If that objection can be evaded, conservatively, safely, by such enactment as the speaker of yesterday suggested, I think politically there would be a great advantage.

The last point I will raise is after all the vital one, the control of the central-reserve institution. It was arranged by Mr. Warburg's plan that the government should be represented through certain executive officers, but that the banks should be dominant, having a majority in the board of directors, or whatever name may be applied to them. There, again, it is utopian to hope that you can get such a scheme adopted without political agitation, and I want to suggest simply for consideration the possibility of securing the same end, the same stability, the same expert management, and yet not incurring the political opposition certain to be made against a proposal which would be interpreted as a plan to give the banking power of the United States still greater control, still greater privilege.

Would it not be feasible to organize some system, for example, by which certain chambers of commerce, credit institutions, boards of trade and other organizations which represent wider interests than the mere banking interest, which are more democratic, and yet which are not in danger of being ruled by mere uninformed popular clamor, shall have such voice either directly or indirectly in electing directors of this central institution, that it shall be put under more democratic control, without any danger at all of that control being political in the ordinary acceptation, without any danger that the directors so appointed would not prove the wisest expert managers for the central institution? Democracy does not mean necessarily that Mr. Taft must choose the directors, or that the directors must be chosen by popular vote. Democracy, however, which in my opinion should prevail to a great extent in the management of any such institution, does mean that wider interests shall be represented in its management than banking interests. The wider you can make the interests so represented with-

out danger to your central principle of expert management and solidity, the more likely you are to get it adopted by the country.

MR. ALFRED O. CROZIER, of Wilmington, Delaware :

I must confess a conversion to the central-banking scheme. It has been a slow process. It has been largely a process of elimination. I cannot devise any other way by which we can have the elastic currency that we need, and still have the system safe.

In an address some time ago President Taft said that the trend of mind of a majority of the Monetary Commission seemed to be towards a central bank of issue, but that such institution if established must not be controlled by Wall street or by politics. This declaration hit the nail squarely on the head and pointed out the two greatest dangers. While recognizing fully the public service rendered by the commission in a most difficult matter, in common with others I should regret any attempt to take from the federal government and put into private hands control of the issue, expansion and contraction of the public currency. Surely the people are not ready to syndicate their entire money supply.

If private parties ever obtain through a central bank or otherwise the legal authority to make money scarce or plenty at their pleasure, they will possess the power of money monopoly by which business credit, the activities of the country, the prices of securities, property and labor can be arbitrarily and suddenly destroyed, and panics, even, can be created. They could if they would terrorize and absolutely dictate to every bank in this country, forcing them all to pay a certain rate to depositors and to loan at a fixed rate to ordinary customers, but to pay a higher rate for the deposits and charge a lower interest on the loans of the trusts and big enterprises in which such private parties have a direct or indirect interest. Each bank would become a mere involuntary agent for collecting the deposits of the people and disposing of them according to the will and pleasure of irresponsible private interests emboldened and made reckless because screened from public view. They would have the benefits without the responsibility. The banks would soon have the responsibility without the benefits. Borrowers would have to pay an ever-increasing interest rate while the interest paid to depositors would be steadily reduced. This is the method always employed by private monopoly when it obtains the power. Its one object is more profits. I do not believe the country will ever approve any plan that would put into private hands this power of life and death over all the affairs, the interests, the prosperity and the happiness of the people. No scheme of private ownership or control of a central government bank can be devised that will not ultimately lead

to control by Wall street; and Wall-street control would mean politics. That was the history of the privately-owned United States bank abolished by President Jackson.

The Monetary Commission undoubtedly will cite private ownership or control of government banks in Europe. But there is no Wall street in Europe. Banking there is usually conducted by men who have no other interests or profession. Here it has become almost the rule for big banks, insurance and trust companies containing the deposit savings of the people to fall under the control of the few masterful men who so largely dominate the railroads and huge trusts, and who use such funds for schemes of exploitation and business in which they have direct or indirect interest.

It would seem clear that a central bank in private hands would complete by law a great money trust. Its powers of monopoly would tend to impose higher interest rates on the people. Its coöperation with the great central banks privately owned abroad would make it easy to increase horizontally the interest rates and value of the bond or fixed-income wealth of the entire world, thus increasing at one stroke and without reason or justice the debt burden on all humanity.

Our own government doubtless would be forced to pay a higher rate of interest on its billion dollars of bonded indebtedness because it had surrendered into irresponsible private hands the absolute power to remove all real competition for loans. The seat of the international conspiracy that forever would fix the interest rate for America and rule in its own interests the financial policy of this republic would be in Europe, far beyond the reach of our anti-trust laws.

The time for Congress to act surely has arrived. The postal-savings-bank law was a good beginning. But now we need a strong central government bank, a real government bank, to rescue the business and the banks of the country from the intolerable conditions into which they are being dragged by Wall-street interests. Such a bank perhaps should rediscount on impartial terms and under proper safeguards for the other banks. The people will insist that the institution be owned and controlled by their government rather than by private parties or corporations. Some will object to divorcing the states from participation in the control and to centralizing all the vast power in Washington. A compromise between the two extremes of private ownership and a centralized federal control would seem possible and wise. The states could be recognized and the power safely balanced so as to care for the local interests of every state and also to conserve the welfare of the country as a whole.



A board of perhaps one hundred governors serving without salary, one member appointed by the governor of each state for two years, and the other fifty-four by the President for four years, one half of them every alternate two years, would be able to give the institution a strong, honest, independent and efficient management that would inspire the confidence of the business world as well as of the people generally. The danger of Wall-street and political domination would be impossible with a board so constituted.

This board could meet quarterly and on special call, the actual running of the institution being in the hands of a small executive council composed of highly-paid and specially-trained men of the highest character, chosen by the board from its membership or otherwise and sworn to their duties as public officials, such men to be completely divorced from all other business entanglements. This plan, or some modification of it, seems to be the only way by which a safe and satisfactory elastic currency can be obtained without increasing present evils. A great institution of that character so managed would in my belief be a national blessing second only to the constitution of the United States.

Your plan has got to go before the public before you get through; so that if you are working with the idea of actually accomplishing anything, a system must be devised in such form that it will ultimately meet the approval of the majority of the actual voters of the United States. That we must look squarely in the the face. The people will not care, as Mr. Martin has said, so much about details, but they will care, they will fight over one question, and that is the question of how this institution is to be controlled. That is the whole problem, and on it we can well concentrate our discussion.

I do not agree with Mr. Warburg, that the putting of the large power which he has outlined into the hands of a private corporation with dividends limited to four per cent, will make it absolutely certain that private interests will never want to get control of that institution and use it for their own private purposes. It is not so many years ago that certain parties were willing to pay several million dollars for a few thousand dollars' worth of stock in the Equitable Life Assurance Society, when the dividend was limited by law to seven per cent. The men who paid that high price for that small amount of stock were after something besides that seven per cent. They were after the control over the hundreds of millions of dollars of loanable funds under direct control of that institution, and the financial and political power that went with that control. A privately-owned central bank will have



a dozen times more financial and political influence over all the banks of the country, over the destiny of the people of the country and through politics over the government of the country itself, than all the insurance institutions in the state of New York.

I have pointed out a plan of control, because I think that is the whole question. I do not say that this plan is right; I simply put it out as a suggestion. This institution, in its effect upon the industries and the finances of the country, is quite as important in itself as is the congress of the United States. It is more direct in its every-day influence upon the welfare of the people. Therefore, in order to be approved by the people of the United States, this institution must be either owned or controlled absolutely by the people in some form or other.

MR. EDMUND D. FISHER, Deputy Controller of the City of New York :

It seems that just now what the country needs is a definite plan, and it seems to me too that this conference is intelligent enough, and has enough bankers of experience in its membership to develop such a plan. I therefore suggest the appointment of a committee to develop a plan to submit to the Monetary Commission. Mr. Pierson hopes that legislation will be secured at the next session of congress. It will not be done unless this very body appoints a committee to draft a plan and submit it to the Monetary Commission.

On motion it was voted that the President of the Academy be authorized, at his discretion, and after consulting with the executive committee, to appoint such a committee.

PAUL M. WARBURG :

Mr. Crozier and Mr. Martin will perhaps be surprised to hear that I fully agree with them in most that they have said. Their main point, I understand, is to be assured that we shall have control as far as possible by the people and not by politics or by Wall street. In the plan I submitted to you that was the first condition that I tried to provide for. I go further than that,—if we are not sure that we shall succeed in keeping this bank free from political or from Wall-street control, it should not be created. We cannot go further than that.

As to Mr. Crozier's plan to get together the governors of all the states and the President and let them appoint one hundred men, in order to keep politics out of the bank in that way, I am afraid that I cannot agree with him. I think it is the surest way to get politics into it. I think it would be a most effective way of getting the worst kind of bank control.

As for the objection that my plan is not so democratic as it should be, further study, I think, will remove that impression. This plan allows one-fifth of the board of governors to be appointed by the stockholders. This one-fifth is to consist, not of bankers, but if possible, of merchants, manufacturers, or other elements than officers of banks. One-fifth is to be appointed by the President, or, to consist of *ex-officio* members, such as the treasurer of the United States and like officers, and the remaining three-fifths are to be appointed by groups of banks. What does that mean?

To begin with, what is this awful institution called a bank? We are not talking of that horrible place, Wall street, but of banks generally. As a rule, the most prominent business men in each locality form the boards of directors in its banks. My plan provides that the banks of one district form an organization similar to those now proposed by the Aldrich-Vreeland bill, which means that the cream of the best element of all the banks, which in turn means the cream of all the best business men, would be interested. This association would name one director of the central bank. There would be men representing the north and the south, the east and the west. These men, who do not know each other, who have no special common interests, would constitute three-fifths of the board of the bank. It is pretty difficult to think of any wrong element getting into this board.

Mr. Crozier spoke of the control of life-insurance companies, and of some one paying so much for a few thousand dollars' worth of stock, whose dividend was limited to seven per cent. I think it ought to be clear by this time that a life-insurance company is something very different from a central reserve organization, as we propose it. A life-insurance company is in the nature of an investment trust, and there goes with it the power to invest millions and millions in securities, and also in stocks, the stocks again giving control of other institutions. What advantage—I should be much obliged to be told—could accrue to the men controlling this central organ which cannot do anything but buy commercial paper? Not a single bond, not a single stock, but only short commercial paper that must be endorsed by the currency associations themselves, in case it is longer than twenty-eight days. I am a Wall-street man, but if anybody should give me the control of that board, I could not do anything with it.

A VOICE: Do you not think there would be a power that might be improperly used in the control of the private corporation that had the power to issue currency and to expand and to contract the entire currency of the United States?

MR. WARBURG: That control might be dangerous if there were any personal gain or any gain whatsoever to be made, but here you have an institution which can do nothing but make four per cent for its stockholders, and if a small amount above this were earned it would go to the government. There would be no incentive to do or permit anything which was not legitimate.

You say it controls contraction or expansion. But again, how could it do that? Only by buying paper, with an entirely unselfish end, the maintenance of the correct proportion between all the obligations of the country and the correct gold reserve. You must trust some one to this limited degree. At any rate I would rather trust these men than your one hundred.

The suggestion that the chambers of commerce should appoint these men, I might say, was considered in our earlier plan; but the chambers of commerce are rather undefined bodies; they are self-perpetuating. Someone would surely claim that the chambers of commerce are Wall-street concerns. You saw quite recently when the New York Chamber of Commerce took a stand on the subway question, that it was said immediately that they represented Wall-street interests. You do not overcome distrust by inserting these bodies. These are only suggestions that we make. We know how difficult it is to approach the ideal. I only wanted to show you that we are fully in accord as to what we want to achieve and that we have given full consideration to these points.

I would like to say a word to Mr. Martin: I do not agree with him. I think that this question can be solved on non-partisan lines, but if it is drawn into politics, it will be only because each party will want to secure for itself the credit of having enacted this most beneficial legislation.

I would like to say one word to Professor Dewey about the possibility of eliminating the power of note issue. He misunderstood me if he thought I said that. I said that note issue was a side question, and ought to be treated as such. Note issue cannot be eliminated. There is no particular discretionary power, as far as this question of note issue is concerned, other than the discretionary power applied to the purchase of discounts. The central organ simply discounts paper. Whether the bank rediscounting the paper shall employ the book credit which it thus receives for the purpose of paying others in credit or in actual cash is beyond the control of the central organ.

As to the difference between the English, the French and the German system, I understood Professor Dewey to say that he thought the Eng-

lish system the better one. I disagree with him. I think that the thing we need is not the English system, but the German or the French,—to which the English will gradually come.

As to the redemption of notes, every note under the central-bank plan redeems itself. Let me take an instance. If the bank should collect all the paper it had bought, all the notes would be redeemed. It is not like a national bank, a security system where the notes go on and are redeemed by a special redemption fund.

I think a certain proportion, of course, must be kept in gold, but whether it should be 33 %, as in the German system, or 40 or 50 %, is a question which will have to be taken up later. I think 33 to 40 % would be sufficient.

One point more, as to the maximum guaranty of four per cent. I do not believe that we can do without it. Four per cent is such a beggarly return for a stock that nobody would buy it unless that return was so secured—it would be practically a government security, and for that reason would be purchased at par. The stock should stand at par, or above par, in order to give the institution the standing that it must command. Besides, the mere fact that the government guarantees the four per cent makes the government stand behind the whole thing,—and it should be so in our country, in order to establish confidence in the notes and in the whole institution. This would enable us to fight every panic which might arise, or rather to avoid it beforehand, and thus our outside banks would be secure.

SENATOR ALDRICH :

I would like to say just one word about what appears to be a misapprehension,—about the desire which is surely general to keep this question out of politics. I think that Professor Dewey and Mr. Martin misapprehended what we are trying to get at. It is not a question at all of eliminating this matter from politics, not that we propose to remove it from the arena of discussion, or that we expect to adopt any plan that does not receive popular approval. We realize that that is impossible.

What I am trying to avoid is having any suggested plan approved or disapproved on account of the advantages which some political party think they could derive from it. That is what we are after. It is to avoid having the question decided upon party lines, for the purpose of securing party advantage. We do not want to see this question decided by the supremacy today of the Republican party or the Democratic party. It is not a political, but a popular question.

I certainly have no hope or expectation or desire to see a plan

adopted that will not meet the test of public discussion, and will not in the end receive intelligent public approval in its broadest sense.

ADDRESSES AT THE ANNIVERSARY DINNER

Address of Mr. A. BARTON HEPBURN, President of the Academy.

The bankers and business men of Europe characterize our monetary system as barbarous, and there is much to justify their extreme criticism.

Essentially the same condition existed throughout the commercial world when the panic of 1907 overtook us. There was not sufficient mobile capital in the world to do the business of the world, to supply the current demands of an intense business activity, augmented by demands for new developments and new enterprise. Under the circumstances it is not surprising that money stringency ensued. The strain was as great in England as in the United States, and even greater in Germany; and yet from October 1907 to January of the following year, notwithstanding this condition in Europe, American bankers bought abroad and imported a hundred and sixteen million seven hundred thousand dollars in gold. The Europeans not only took care of their own affairs, but they spared that gold to us, and it was brought here at a premium ranging as high as three per cent for a goodly portion of it. At the same time, American banks, especially in the money centers, were compelled to suspend payment by the expedient of resorting to clearing-house certificates and clearing-house notes. The strain was no greater here than it was in other commercial nations, and yet they, by means of a superior credit currency system, were able to meet and master conditions without currency suspension.

The experience of that year, which is fresh yet in the memory of us all, shows many of the evils of our monetary system, three of which, I think, deserve special mention; first, the utter failure of our currency to expand and contract in response to commercial needs; second, the want of centralized reserves which can be used as a potent auxiliary for good when and where needed; and third, and quite as important as all, a new credit system, a means whereby credit can be extended, not only in times of stress, but at all times, in order that interest rates may be measurably equalized throughout the country.

Congress, confronted with this condition of affairs, gave us the Aldrich-Vreeland Law, a law which has been much and severely condemned for what it does not do, and perhaps justly. It was only an emergency measure, yet it boasts of many friends, and possesses many virtues.



Congress also gave us, what is better, a currency commission, so ably represented here this evening, charged with the duty of devising and reporting to Congress a currency, credit and banking system, which would place us on a par with our business rivals; and when the names of the men were announced hope grew to confidence that relief was at hand. We felt that this most important question was in charge of able, earnest, experienced, and resolute men, who would devise a system and bring about the enactment of laws which would place it in operation. We felt that Senator Aldrich, with his long public service, his great ability, and his masterful handling of men, could not fail to secure the enactment of any measure which he might champion. The other day, when the public prints announced that he was going to retire from public service at the close of his present senatorial term, I nearly had heart failure. I still have hopes that Providence, and the Legislature which meets in Providence, may decree otherwise.

The commission went about its labors thoroughly and systematically. It made a study of monetary conditions at home and abroad, and published the results of its study. Thus there was brought within reach of the public a most valuable and complete library upon the question of currency, credit and banking.

Just what the commission has done, what it proposes to do, and what coöperation it requires upon the part of the public will, I presume, be amply dealt with by Senator Aldrich in his address this evening.

Address of NICHOLAS MURRAY BUTLER, President of Columbia University.

My task is none the less grateful because it is easily and quickly performed. It is to convey a greeting to the Academy of Political Science on the completion of thirty years of usefulness, and to add a word or two as to the significance of the gathering to-night, and of the meetings which began so auspiciously this morning, and which continue throughout to-morrow.

These academies, which have sprung up all over the world and of which this academy of ours is both an example and a type, are interesting attempts to ally or combine together the theoretical and practical interest of civilized peoples in the great problems and questions of the hour.

I suppose that the research and scholarship and learning of a great university faculty would be narrowed and cribbed and confined, if it were made solely the subject of instruction to those who came to study and to learn in formal fashion. We have seized hold of the notion



that a modern university is a great public-service institution, that it owes a duty to the public, and that one of its duties is to bring its knowledge, its learning, its scholarship, to bear upon the practical problems of the hour.

Now, the academy is an intermediary between the university and the public. There the scholars and the men of affairs, those who may perhaps be said to be amateurs in scholarship, come together to hear stated in practical and definite and succinct fashion the results of the latest reflection upon human experiences, the latest examination of human tendencies, the latest searching and study of the records of human experience in affairs of politics and of government. And so it is a real subject of felicitation that this academy like its fellows elsewhere in this country and abroad, has succeeded in building up a great interested constituency; a large company of converts, of friends, of supporters and coöperators, who are willing to follow this method, to show their interest in the task of bringing our best theory and our wisest practise into harmony.

It is a subject for very real congratulation, not only from the standpoint of the university, but from the standpoint of the public, that this undertaking was conceived, that it has existed so long, that it has achieved so much, that its future is so full of promise; and I should like to say a word on the significance of this present gathering.

Here are members of the National Monetary Commission, members of the American Bankers' Association, economists, publicists, and men of affairs in large numbers from all over the United States. Why? In order that they may confer together upon one of the most far-reaching and important questions that confronts a modern people, namely, the safety, security and simplicity of our banking and currency system.

It is rather a curious commentary upon our political life of to-day that while this question stares us in the face, while its problems cannot be dodged, but must be solved, we have just come from the election of a congress through a campaign in which, unless I have overlooked the fact, this all-important subject has been discussed by no single human being! Everything else in the heavens, above the heavens, on the earth, and beneath, and in the waters under the earth has been talked about, but a congress has been chosen which may in all probability find itself called upon to deal finally, for the present, at least, with this question, and its members are without the enlightenment which would come from a great public discussion before their constituency upon the subject of monetary reform, and a permanent monetary system.

It is a curious, not to say a sad commentary upon some of the tendencies of our contemporary politics that these very serious, and prominent, and inescapable questions are subordinated to matters which more easily lend themselves to the treatment of rhetoric, and disappear into dark night when the votes are counted.

The task of this conference is simply a public-spirited, a patriotic task, not of supporting any preconceived program, not of advancing and insisting upon any party platform, or any theory, but of conferring together in all honesty and openness of mind, and with the book of human experience open before us, to discover what we ought to ask the congress of the United States to do.

I submit that that is an important, a patriotic, a genuinely public task, and as a citizen and as a member of this academy, I offer an expression of my appreciation and thanks to those men in public life and in business to-day, who are giving long days and nights to a serious study of this great question, with a view to guiding American public opinion correctly in regard to it.

Address of DR. LEO STANTON ROWE, President of the American Academy of Political and Social Science.

I bring you this evening the greeting and the sincere congratulations of a sister organization which is attempting to promote the same high purposes for which this association was founded. Of all the standards that have been applied for the purpose of comparing progress in different nations, I know of none so effective as the measure of influence which an association such as this exerts in enlightening and organizing public opinion.

Apparently the people of the United States are gradually emancipating themselves from the belief that democracy means the indiscriminate application of the elective principle to every public office. I know of no change so significant in the thought of a nation as the clear perception of the fact that we approach true democracy in proportion as an organized and enlightened public opinion controls the policy of our government.

In the formation and organization of this public opinion the academies of political science must play an important part. It is a real tribute to the civic spirit and the patriotism of the American people that so large a number of persons in this and in other organizations are now giving their time and their energy in order that the ideas of the American people on these great questions may be final, and may be right.

I combine with the greeting of the American Academy of Political and Social Science the sincere hope that the work which you are doing,

and with which we wish to coöperate, may be even more fruitful in the future than it has been in the past, and that the Academy of Political Science and the American Academy of Political and Social Science through close coöperation and mutual helpfulness may further the great purposes for which they have been founded.

ADDRESS OF SENATOR ALDRICH

The National Monetary Commission has completed its work upon one very important phase of the examination which it believes to be necessary, preliminary to the preparation of its final report. I allude to the inquiry which has been made into the experience of other countries—an exhaustive examination into the conditions and causes which have led to the adoption of the modern monetary systems and practises in the other commercial nations of the world.

Your president has alluded briefly to the value of that examination and its results. I think the series of monographs which have been published and distributed, together with two or three others that are now in course of preparation, will certainly present to students and to the people of the country a much better history of what has been accomplished in this respect than could be otherwise obtained.

We commence today our work upon another and even more important phase of the difficult task which has been assigned to us—the work of further investigation, with a view to reporting at the earliest practicable moment some plan for the approval of Congress.

We intend—and I believe I can safely speak for the entire commission—to be unceasing in our labors, with this object in view; and if the time taken is longer than some of you think it should be, I am sure that when you consider the magnitude and complexity of the questions involved you will be lenient with us for any delay that may seem to you unnecessary.

What we now propose is to seek the counsel and invoke the calm judgment of economists, students, men of affairs, bankers and business men with reference to the work we have in hand. We shall appeal for assistance to the thoughtful men of the country, like those whom you have called together to-day. We intend to confer with the committees of the American Bankers' Association, the representatives of the merchants' associations in New York, and other representatives of the commercial and banking organizations of the country. We shall ask for their coöperation and support in presenting some wise and reasonable solution of this vast question.

We have delayed the commencement of this necessary part of our

work until the preparation and publication of the series of monographs I have referred to was completed. I had another reason for not calling the commission together within the past six months. I did not think it wise to enter upon any public discussion of this great question in the midst of a heated political campaign. If any satisfactory or successful solution of this great problem is to be found, it must be reached without reference to the advantage or disadvantage that might accrue to any political party.

It is not and cannot be properly regarded in any sense a political question. It is a business question affecting the material interests of the entire people of the United States. It is not a question which concerns economists, students, and men of affairs alone; it affects borrowers as well as lenders. It affects financial institutions, but it also affects the great mass of the people who are interested in the stability of such institutions. The number of depositors in the various banking institutions of the United States is greater than the entire number of persons engaged in gainful occupations in the country. In other words, the people of the entire country and every section are either directly or indirectly interested in the character of our monetary and banking systems, and in the wisdom or unwisdom of our legislation affecting the same.

I am greatly impressed with the fact that the acceptance of any plan which we may agree upon by either congress or the people will depend upon the elimination of politics from every phase of its consideration. The possibility of political control of any organization we might approve would be fatal.

I realize this, and I think my associates on the commission will bear me out when I say that this is not a new thought on my part. It has not arisen in my mind since I decided to go out of political life; it was not affected by the events of the last week; but it comes from a knowledge that this question, if it is to be settled at all, must be settled upon scientific and business principles that will appeal to the people of this country regardless of their party affiliations or political bias.

The members of the commission as yet have no plan. They are approaching this question with an open mind; and we have a right, I think, to ask the economists and thoughtful men throughout the country to approach it with an equally open mind.

I have been told frequently that we should encounter prejudices—prejudices of locality, prejudices as to the control by great interests of any institution or any organization which we should suggest. I realize as well as any person can that for any successful solution of this ques-

tion we must not only eliminate politics, but must eliminate the possibility of control by any section of the country, or by any interest, great or small.

This question, as I have frequently said, is essentially a national question. It must be settled upon national lines. I realize, perhaps better than anyone else, that great differences have existed and do exist probably to-day with reference to every phase of the problem. I shall not take your time to-night in stating in detail my understanding of the defects of the existing system, or my ideas about the system which should be adopted. I said a year ago that in my opinion the questions affecting the currency and note issue were of much less importance than the question of the organization or reorganization of the credit and banking systems of the country. Further study and more careful examination have confirmed me fully in that belief.

I was greatly gratified this morning to hear one of America's greatest economists, Prof. Laughlin, take the position that after all this question was not one primarily or particularly of note issues, but of reserves and of the lending power of banks. In other words, it is a question of how we can make our immense capital always available for the requirement of each and every business community in this great country. I realize fully, as I am sure that Prof. Laughlin does, that there is an important question connected with the character of our note issues and the manner in which they shall be issued; but that is subordinate to the other. I have been struck also within the last three months with the importance of this question, not only from a domestic standpoint, as a local question between banks and their customers, but as affecting our international relations, which are to us of such rapidly-growing importance.

The United States is assuming a more and more important position every day as a great power in the world of finance. Just as we are interested in the financial affairs of Berlin, Paris and London, so Berlin and Paris and London are interested in what happens in the United States. What happens here is felt throughout the world. The reverberation of the panic of 1907 encircled the globe, and every country, no matter how excellent its banking system, felt the blighting effect of our panic.

There are other phases of our international trade of interest in this connection. We export from the United States \$1,500,000,000 worth of products, we import about \$2,000,000,000 worth of products, making in all a foreign commerce in the neighborhood of thirty-five hundred million dollars. Eighty per cent of that vast business, at least, is done by foreign bankers, with foreign capital. Of course, some of it



passes through New York, New Orleans, and Chicago in transit, but the real business is done by foreign houses, with foreign bills of exchange. Now it is not exactly creditable to us, with our immense capital and resources, that this should be true.

The situation recently disclosed with reference to cotton bills shows what might easily happen to us, and what would have happened to us, except for the courage and intelligence of the gentlemen who had control of the negotiations. There might have been serious financial trouble. And who would have suffered? Who pays the bills for these exactions and these regulations, whatever they may be, that the foreigners put upon us, with reference to our foreign business? It is the American producer in the last analysis. Another very recent event has attracted my attention. American capitalists, it is said, have undertaken to underwrite a loan to China for \$50,000,000. If we had an organization here that had the strength which the central institutions of England and France and Germany have, is it not probable we should have transactions of this character more frequently?

A few days ago the Department of Commerce and Labor published a statement showing the increase in our exports of manufactured products. It is said that trade follows the flag. But it never follows the flag if that flag is an empty symbol. It follows the flag only when we show an intelligent knowledge of the conditions of the parties with whom we seek to trade. One of the first necessities of the effort to expand our trade is to have banking facilities that will command confidence in all the markets of the world. We can extend our foreign trade by having closer commercial relations with our near neighbors—with Canada and with Mexico. We can extend it by having closer commercial relations with South America and the Central American States and the countries of the Orient.

I understand perfectly well that the question might be readily asked me—and I think I see some gentlemen in the audience who would be very likely to ask it—how are you going to get closer commercial relations with South America and the Orient, with your views upon reciprocity treaties and upon the tariff? I would say, as I have always said, that we ought to have closer relations, whether it involves the making of commercial treaties or otherwise, with the countries who are the only profitable customers we can hope to have for our products—countries that buy what we have to sell and sell what we have to buy. I have no objection whatever to commercial treaties with the South American states, with some of those great states which in the future of the world's history must occupy a position in this hemisphere that will be second only to the United States itself.



If I were controlling this administration—and, going out of politics, I think I can express this opinion safely—I would immediately open negotiations with every one of these countries looking to the extension of our trade, looking to closer commercial relations. Look at the situation in the Orient, and think of its possibilities. But these possibilities will be strengthened—I might almost say they will be created—by a proper organization of the credit system of the United States. I believe that we are all coming to the conclusion that in some way, not yet put down in black and white, not yet formulated by any man,—that in some way we must thoroughly reorganize our credit system.

This work will be a work, not of revolution but of evolution. It will not be a work of destroying existing institutions, or curtailing the spirit of independence of existing institutions, but it will be a work of construction, commencing upon the great plane of our existing organizations and building up from that; an organization that will be effective in times of panic, that can use the reserves of all in special cases for the general good whenever occasion requires, that will place the credit of this great country and of all its people where it belongs, unequaled by any in the world.

Address of HONORABLE A. PIATT ANDREW, Assistant Secretary of the Treasury :

There is only one thought which I am anxious to emphasize tonight and it is a thought which Senator Aldrich and Mr. Scheff have both expressed. Its recognition I believe is essential for the achievement of any substantial results by the Monetary Commission, and otherwise the work of the Commission is likely to have been in vain. I mean the importance of regarding the Commission as a *National* Monetary Commission, and of treating its legislative program, whatever it ultimately may be, as a non-sectional and non-political endeavor.

Ordinarily it is true that measures involving important questions of principle have been initiated as policies of the party which was dominant at the time and have been debated and passed as such. It is also true that important policies have sometimes been advocated and opposed upon geographical rather than upon partisan grounds. This was the case with some of our earlier tariff acts. It was conspicuously the case with the silver legislation of the early nineties, including the silver-purchase act and its repeal. Most of our legislation unquestionably has been shaped, advocated, contested, and finally passed upon political or sectional grounds.

There have, however, been occasions in the history of the country,

and not a few of them, when a great public need has been recognized beyond the bounds of parties and localities, and when a proposed remedy has been discussed without regard to political or local interests. Permit me to recall to you some of the most important legislative milestones in the course of American history which have been erected through the large-minded coöperation of leaders in both parties and through the votes of senators and congressmen without regard to their affiliations. The more important financial measures of the civil war period were with few exceptions discussed and passed without division along party lines. The legal-tender act of 1862 received a majority of the votes of each party in both houses. The national-bank act of 1863 also received numerous Democratic votes along with those of Republicans. And when the war was over the great refunding act of 1866 was debated and voted without any trace of political alignment. The same is true of our railway legislation. When in the course of the eighties the tremendous growth of the railroads raised new problems of concern to the whole country, the regulation of interstate commerce was not debated as a party measure, and the act of 1887 which instituted the Interstate Commerce Commission was passed in both houses by a vote which included a large majority of the representatives of each of the two principal parties. In like manner the amendments to that act, the so-called Elkins act of 1903 and the rate bills of 1906 and 1910 were passed by votes which were practically unanimous.

We are confronted again to-day with a problem which vitally concerns all sections of the country—the problem of so reorganizing our banking system that we may avoid for the future the recurring conditions which have caused our solvent banks without reason to suspend, which have brought prosperous and well-conducted industries to a standstill, and have impaired respect for American credit and American intelligence throughout the world. The problem regarded in all its bearings, and particularly from the point of view of the future development of the country, is one of the most important with which our government has had to cope since the early days of the republic. As a constructive problem it is formidably complex and of untold ramifications. It requires the most honest, unbiased and dispassionate thought and the wisest and sanest counsel from all parts of the country. It can never be solved by the methods of campaign orators or political platform writers, and every effort must be made to prevent its being handled by them. It must be treated as the financial legislation of the great war period was treated, or as the Interstate Commerce Act of 1887 and its amendments have been treated, as a national measure paramount to considerations of party politics.

No one can yet foresee what may be the effects of the interesting events which occurred earlier in the present week [the election], but I suspect that they may conduce in some measure to the achievement of the end which I have named. For Democrats and Republicans alike will now share the opportunity and divide the responsibility of putting aside factional interests in behalf of a great constructive effort. In furthering this object, in helping to keep the Commission's work neutral, non-partisan and dispassionate, the bankers and business men, the chambers of commerce and merchants' associations, the universities and academies of political science such as are represented here tonight are in a position to contribute invaluable aid.

Address of JACOB H. SCHIFF

The din of battle is over, the American people have spoken, victor and vanquished accept the verdict with singular unanimity. Before long the issues which the recent campaign has so prominently brought forward will have to be taken up and their solution attempted. Currency reform, it is true, has not played any part in the campaign, but, nevertheless, it is an issue of no mean importance, and until the solution of this momentous question shall have been attained, lasting prosperity cannot be counted upon.

We may have, and doubtless shall have, successive years of profitable commercial and industrial activity; the country, for a time, will appear prosperous and contented, but the enemy lurks at the door, and when least expected, he is likely to gain admittance and again bring upon us the same disaster from which we have had, periodically, so seriously to suffer, while other nations have remained exempt. The remedy is so simple that it is almost inconceivable why we tarry so long before we learn to apply it.

The question of currency reform should not be a party question, for the weal of the entire nation and the whole people is so greatly dependent upon its early and proper solution that it should have precedence over every other question which now awaits discussion and action by Congress. So much has already been said and written upon it that it would almost appear as if the last word had been uttered and nothing new could be added.

The country is now awaiting with impatience the report of the National Monetary Commission, for it is felt that until the report of the commission and its recommendations are before the country, it can be of little advantage to bring forth further independent discussion of this momentous question.

The American people have learned a good deal in the past few years, nor can there be much doubt that it is now well understood and generally recognized that no project for reforming our monetary system can bring the relief so badly needed, unless based upon a centralizing of bank reserves, at present so widely scattered, and because of this of so little actual value in time of distress.

The emergency currency, which may be issued under the so-called Aldrich-Vreeland Act, and the sufficiency of which has not yet been tested, will, not improbably, if need arises, serve well as a temporary makeshift in helping to prevent excessive money rates under conditions which, without such an emergency provision, might lead to great stringency. An actual financial crisis the Aldrich-Vreeland measure will never suffice to prevent.

It was the Chamber of Commerce of New York, which, I believe, when the present agitation for monetary reform first started, declared unequivocally in favor of a central bank, though it sidetracked the proposition because its committee assumed that the people, as a whole, were not at that time ready to adopt so far-reaching a change in their methods, but I am quite certain that the membership of that important body is today even more nearly unanimous in the opinion that no other way exists out of our recurring financial difficulties than the establishment of a central agency, through which the requirements of our ever-changing financial conditions shall become prudently regulated and provided for.

Almost three years have passed since the last great financial panic came upon us. With a succession of good crops its effects have passed away in a comparatively short time. We have, however, by no means become immune and unless we are this time wise and prudent enough to repair our roof while the sun shines—and it will, I believe, shine for some time to come—unless we take action before long in constructing and adopting a monetary system which shall better move with the expansion and contraction of the country's trade and commerce than does our existing system, we shall, without doubt, be taught another hard lesson, which we might as well spare ourselves.

Gentlemen of the Monetary Commission, the responsibility, for the time being, is upon you. The country waits with impatience your conclusions, and be assured, when these are placed before the American people, they will be considered with care and intelligence. A right and proper solution, based upon your conclusions and recommendations, will, I believe, be found.

With the excitement which the late election has called forth, ended,

let us hope that the country will now go about its legitimate business, for which underlying conditions are, for the time being, very satisfactory indeed. The two great issues which need to be promptly, courageously and wisely dealt with to assure permanent prosperity are the tariff and the currency; of these two the currency is the more important and should have the right of way.

Address of PROFESSOR J. LAURENCE LAUGHLIN

After all that has been said it remains for me only to deliver a funeral oration over our existing monetary system.

The dynamic forces of progress have at last begun to undermine the crude and insecure fabric of our monetary institutions. Silver-tinselled and paper-roofed, the structure always presents a shattered and sorry condition after every financial storm; the wreckage of it would be comic, were it not that it uncovers to wind and weather our business prosperity and the very vitals of our national economy. We have stood naked to the world, ashamed of our condition, a by-word among nations long enough. And now that the foundations of our party organizations are also heaving and breaking up, it is high time we mended our monetary house. The like of the dime-museum of monetary curiosities we now boast of has never before been collected under one tent. They have no relation the one to the other; like Topsy they "jest grewed." They represent all the hoary fallacies of greenbackism, free coinage, or any other wild theory, which for a time got enough followers in Congress to make them subjects for bargaining in the game of "scratch my back, and I'll scratch yours." It is well that we should take our monetary legislation out of politics, and treat it as we would treat the prevention of an epidemic like cholera—as a question of national health, to be handed over to experts.

Our silver currency, with 55 per cent seigniorage, masquerades at par like the thin legs of a boy in trousers twice too large for him. Industry, at each task put upon it, steps gingerly about, clad in our rigid United States notes, too tight for the wearer—with a sound of splitting garments. Our national-bank notes, given us by Chase as a relic of hard times when he was selling bonds during the Civil War, were once our pride, which we wore with undissembled vanity. Now, they recall Montaigne's apparel: "My perfumed Jerkin serveth for my nose to smell unto, but after I have worne it three or four daies together, not I, but others, have the benefit of it." Perhaps I am not mistaken in thinking that I hear the tread of the laundryman coming and that our ill-smelling motley is in imminent danger of soap and water. Heaven



send us a vigorous cleansing,—and best of all a modernizing of our antiquated wardrobe.

From 1862 to 1908 is a far cry ; and common sense and knowledge of money during that legislative period were like voices dimly heard in the wilderness. In 1862, when borrowing for public needs in the form of inconvertible paper without a dollar of coin reserves in the treasury, we committed the unpardonable sin of confusing the fiscal with the monetary functions of the government ; and it was not until the Act of March 14, 1900 that in a provision, quite unnoticed by the public, we made an epoch-making departure from the old error by forever separating the reserves held for the protection of our convertible paper from the free funds of the treasury directly affected by the fiscal accidents of income and outgo. It is significant, however, to note that the act of 1900 was the reluctant response to the urgent demands of business men and chambers of commerce gathered in 1898 at Indianapolis. The cowardice in the early years of 1866 and 1868, in turning from the avowed original policy of speedy contraction after the war, was followed by the error of 1878, which created the endless chain—and nearly wrecked our system in the Harrison and Cleveland administrations. The inconceivably bad politics which led congress to conciliate rather than educate the silver vote, made us suffer frightful losses in the panic of 1893. And for his action in courageously closing that chapter of monetary nightmare, Nov. 1, 1893, I am firmly convinced that President Cleveland will rise higher and higher in the esteem of posterity the more those events are viewed at a historical distance. Now, with the vigorous and intelligent action of congress itself in appointing a National Monetary Commission to go to the bottom of the whole matter, it looks as if this long period of blunders and fiascos has come to an end. And, now that Mr. Bryan has withdrawn from his long-continued occupation of electing Republican presidents by injecting monetary fallacies into politics, we may proceed in calmness and good order to treat this great and difficult problem, for the first time in our monetary history, on its merits, in a wholly non-partisan fashion. Surely, the business interests of the country have suffered enough to have bought the right to insist on an expert solution of an intricate question. It is not of a kind that can be settled by a counting of noses.

Congress has always been sensitive to having outside commissions telling it what to do. Obviously it wished to keep the opportunity for political bargaining. But, however that may be, no such difficulty can arise now, when congress has appointed its own commission ; and



today the whole country is looking to this commission with an expectation that cannot be denied for a solution that will be not only right but permanent. It is needless to say that never has a heavier responsibility been laid upon a body of publicists than on this commission. Academic theories have no place here ; we are expecting from the commission a masterly solution of a big practical problem, which concerns the welfare of rich and poor, banker and borrower, every receiver of a fixed income and wages, and every man who wishes that industry shall be saved from the unnecessary damages now following from every paroxysm of credit. It is not an easy task ; but they have put their hand to the plough, and cannot turn back. Heaven help them to plow a furrow straight and deep !



## CONSTITUTION AND BY-LAWS

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### CONSTITUTION

#### ARTICLE I—*Name*

The name of this association shall be "The Academy of Political Science in the City of New York."

#### ARTICLE II—*Objects*

The objects of the Academy are the cultivation of the political sciences and their application to the solution of social and political problems. These objects shall be prosecuted in such manner as the Board of Trustees shall from time to time direct, either by the encouragement of research, the holding of public meeting or lecture courses, the establishment of a library, or in any other way the Board may approve.

#### ARTICLE III—*Headquarters*

The headquarters of the Academy shall be in the City of New York, and the Academy shall be affiliated with Columbia University in such manner as the Board of Trustees may be able to arrange with the Trustees of Columbia University.

#### ARTICLE IV—*Membership and Dues*

The Board of Trustees shall prescribe the qualifications of members, and establish such classes of membership, whether life, active, associate or otherwise, as it may deem wise, define the privileges of members and the amount of the annual dues or life-membership fees to be paid by the members.

#### ARTICLE V—*Government*

The management of all the affairs of the Academy and the trusteeship of all its property are vested in a Board of Trustees composed of nine directors elected by the members of the Academy, and the officers elected by the Board of Directors.

Three directors shall be chosen at the annual meeting each year for a term of three years each.

At the annual meeting at which this constitution is adopted nine directors shall be elected and those persons so chosen shall at their first meeting, to be called within one week from the date of the annual meeting by the secretary of that meeting, cast lots so that the terms of service of three directors shall expire at the next annual meeting, three at the second, and three at the third annual meeting from the one at which the nine directors were chosen.

The directors and the officers together constitute the Board of Trustees and any five of them shall constitute a quorum. The Board shall meet at the call of the President of the Academy, who shall be *ex officio* the Chairman of the Board. At any time at the written request of three members of the Board the President shall call a meeting.

In the event of the death or resignation of a director, the Board shall fill the vacancy until the next annual business meeting of the members when the members shall elect a person to fill the unexpired term.

#### ARTICLE VI—*Officers*

The officers of the Academy shall be a President, two Vice-Presidents, a Secretary and a Treasurer, who shall be elected annually by the directors at the first meeting of the Board subsequent to the annual business meeting of the Academy. They shall be elected for a term of one year and shall serve until their successors are chosen and shall perform the duties usually pertaining to their respective offices and such as may be prescribed by the Board of Trustees.

#### ARTICLE VII—*Meetings*

The meetings of the Academy shall be held at such times and places and for such purposes as the Board of Trustees may direct, except that at least once a year in the month of December or January the Board shall fix a date for the annual business meeting for the election of directors and the presentation of reports on the work of the Academy from its officers or from

the Board of Trustees, or both, and notice of such meeting shall be mailed to all members at least ten days prior to the date so fixed. Such members as are present shall constitute a quorum.

#### ARTICLE VIII—*Advisory Council*

The Board of Trustees may elect an Advisory Council to be composed of men distinguished for public service, whether members of the Academy or not, provided they are interested in its work and willing to give counsel in the formulation and execution of its policies.

#### ARTICLE IX—*By-Laws and Amendments*

The Board of Trustees shall have power to adopt by-laws not inconsistent with this constitution for the better transaction of its business, and amend the same at pleasure and this constitution may be amended by a majority vote at any annual business meeting or at any regularly called special business meeting of the members of the Academy provided notice of such meeting has been mailed to all members at least ten days prior to the date of meeting, and provided further, that all amendments shall have the approval of a majority of the Board of Trustees, or otherwise must be considered at two consecutive business meetings of the members of the Academy before they can be put to vote.

#### BY-LAWS.

1. The Board of Trustees shall meet at the call of the President, and five members shall constitute a quorum. On written request of three members of the Board the President shall call a meeting of the Board.

2. Any persons interested in the work of the Academy and signifying a desire to promote its objects shall, upon application to the Secretary and upon payment of dues for the ensuing year, be enrolled as a member.

3. Members of the Academy shall pay annual dues in the amount of five dollars, payable in advance. Said payment shall date from the first day of the quarter (January—March,

April—June, July—September, October—December) in which such members were enrolled, except that the membership of persons enrolled in March, June, September and December shall date for the payment of dues from the first day of the following month.

4. Any member may compound his annual dues by the single payment of one hundred dollars and thereby be enrolled as a Life Member and be exempt from further payment of annual dues.

5. The President shall have executive control of the business offices of the Academy. He shall appoint an "Assistant to the President" subject to the approval of the Board and at a salary to be fixed by the Board, and shall prescribe the duties of that officer.

6. The President shall approve all bills incurred for the Academy and transmit them for payment to the office of the Treasurer, together with copy of, or reference to, the resolution of the Board under which the expense was incurred, except that incidental office expenses in an amount not to exceed one hundred dollars (\$100) a month, and bills for temporary service in the offices of the Academy, or for purposes (services, material, traveling expenses, *etc.*) connected with the regular routine business of the Academy, or the work of any of its committees, in amounts not exceeding one hundred dollars (\$100) may be paid by the Treasurer upon the approval of the President without special resolution of this Board, provided, however, all such payments be reported to and approved by the Board at its next meeting.

7. These by-laws may be amended at any meeting of the Board of Trustees by a majority vote, provided at least eight members of the Board vote in favor of such amendment or subsequently record in writing their consent thereto.



## MEMBERS OF THE ACADEMY OF POLITICAL SCIENCE

Abbott, E. G.	14 Deering St., Portland, Me.
Acheson, Edward G.	Niagara Falls, N. Y.
Adams, A. E.	5th Ave. & Broadway, Youngstown, O.
Adsit, Charles	Hornell, N. Y.
Agar, John G.	31 Nassau St.
Allen, D. B.	Arlington, Iowa.
Allen, Frederick H.	63 Wall St.
Allen, Mrs. George W.	Box 188, Bayden, Cazenovia, N. Y.
Allen, William H.	385 Central Park West.
Altschul, C.	10 Wall St.
Altschul, Richard	The Angle London & Paris Nat. Bk., San Francisco, Cal.
Alvord, Andrew P.	12 West 44th St.
Anderson, A. A.	80 West 40th St.
Anderson, Frank B.	Bank of California, San Francisco, Cal.
Anderson, Mrs. J. Scott	Swarthmore, Pa.
Andrews, A. C.	83 Cedar St.
Andrews, Constant A.	606 Madison Ave.
Archbold, John D.	26 Broadway.
Armstrong, Dwight M.	1150 Eastmoreland Av., Memphis, Tenn.
Armstrong, S. T.	Katonah, N. Y.
Arnold, Carrington G.	30 Broad St.
Atkinson, Franklin Pierce	Great Falls, Montana.
Atterbury, Charles L.	30 Broad St.
Auerbach, Joseph S.	32 Nassau St.
Austin, Charles	23 West St., Battle Creek, Mich.
Austin, Walter B.	260 West Broadway.
Avery, Samuel P.	61 Woodland St., Hartford, Ct.
Babbott, Frank L.	346 Broadway.
Bache, Jules S.	42 Broadway.
Bacon, George Wood	115 Broadway.
Baer, George F.	Reading Terminal, Phila., Pa.
Baettenhaussen, Theodore	542 Fifth Ave.
Bailey, Frank	175 Remsen St., Brooklyn, N. Y.
Baird, F. C.	224 Frick Bldg., Pittsburgh, Pa.
Baker, Alfred L.	209 LaSalle St., Chicago, Ill.
Baker, George F., Jr.	2 Wall St.
Baker, O. M.	Myrick Bldg., Springfield, Mass.
Baldwin, William D.	175 West 58th St.
Baldwin, William H.	1415 21st St., Washington, D. C.
Bancroft, Miss Margaret	Haddonfield, N. J.
Bangs, L. Bolton	32 East 51st St.
Banks, Enoch Marvin	Gainesville, Fla.

\* Only the street and number are given in Manhattan, New York City.

- Barber, James T. Eau Claire, Wisconsin.  
 Barbour, Edmund D. 610 Sears Bldg., Boston, Mass.  
 Barnum, William M. 62 Cedar St.  
 Barstow, George Eames Barstow, Texas.  
 Barthèlèmy, Louis C. J. 10 Wall St.  
 Battelle, John Gordon 662 East Town St., Columbus, Ohio.  
 Bayne, Howard 135 Broadway.  
 Beaman, George Herbert 2232 Massachusetts Ave., Washington, D. C.  
 Becker, Neal Dow 60 Wall St.  
 Beckwith, Holmes 1086 Amsterdam Ave.  
 Beeber, Mrs. J. A. 600 W. 4th St., Williamsport, Pa.  
 Beekman, Charles K. 52 William St.  
 Beer, G. L. 329 West 71st St.  
 Belmont, August 23 Nassau St.  
 Bemis, E. W. 106 Hamilton Ave., New Brighton, S.I.  
 Benedict, L. C. 7 Wall St.  
 Bensel, J. A. 299 Broadway.  
 Benton, A. 79 Wall St.  
 Beran, Theodore 259 West 92nd St.  
 Berard, Eugene M. Prospect Ave., Hackensack, N. J.  
 Berglund, Abraham Pullman, Washington.  
 Bernard, G. H. Glasco, Kansas.  
 Bernheim, Julius C. 143 West 79th St.  
 Bertschmann, J. P. O. Box 418, New York City.  
 Berwind, Edward J. 1 Broadway.  
 Best, Harry 476 West 152nd St.  
 Bestor, George W. 954 Security Bk. Bldg., Minneapolis, Minn.  
 Bettman, Alfred 1514 First Nat. Bk. Bldg., Cincinnati, O.  
 Betts, Robert M. Cornucopia, Oregon.  
 Bickford, Herbert J. 100 St. Marks Place, New Brighton, S.I.  
 Bijur, Nathan 160 West 75th St.  
 Bilgram, Hugo 1235 Spring Garden St., Phila., Pa.  
 Billquist, C. Edward 11 Broadway.  
 Bishop, James C. 33 Pine St.  
 Bishop, Samuel H. 500 West 122nd St.  
 Black, Hugh 109 Lorraine Ave., Upper Montclair, N.J.  
 Black, William H. 18 East 32nd St.  
 Blades, James B. New Bern, N. C.  
 Blake, Edwin M. Room 1406, 1 Liberty St.  
 Blake, Joseph A. 601 Madison Ave.  
 Blanchard, Irvin T. Woodland, N. C.  
 Blashfield, Edwin H. 48 West 59th St.  
 Bliss, C. N. 29 East 37th St.  
 Bliss, C. N., jr. 117 Duane St.  
 Bliss, William H. 6 East 65th St.  
 Blount, Henry F. The Oaks, Washington, D. C.  
 Blum, Charles Jacksonville, Fla.  
 Blumenthal, Hugo 5 Nassau St.  
 Blumenthal, Sidney 329 West 87th St.

- Boas, Emil  
 Bodine, Samuel T.  
 Body, Joseph F.  
 Bogne, Virgil G.  
 Bond, James A. C.  
 Bondy, Joseph  
 Bontecou, Frederic T.  
 Booraem, Alfred W.  
 Borg, Sidney C.  
 Bostwick, Charles F.  
 Boudin, L. B.  
 Bouvier, John Vernon, jr.  
 Bowman, Harold M.  
 Bowne, S. W.  
 Boyd, John Y.  
 Boyd, R. E.  
 Bradley, Robert S.  
 Brainerd, Ira H.  
 Braley, Henry K.  
 Brandner, Benjamin L.  
 Brandow, Morris  
 Braswell, James C.  
 Bremer, Paul G.  
 Brewster, William T.  
 Brice, W. Kirkpatrick  
 Bright, Edgar H.  
 Brinsmade, John C.  
 Bristol, George W.  
 Britton, Alexander  
 Brodsky, Randolph J.  
 Brogan, Francis A.  
 Brokaw, George T.  
 Bronner, Harry  
 Bronson, E. B.  
 Brookings, Robert S.  
 Brown, Charles C.  
 Brown, Charles Paul  
 Brown, Charles S.  
 Brown, Dickson Q.  
 Brown, Frank L.  
 Brown, Francis Shunk  
 Brown, Franklin Q.  
 Brown, H. J.  
 Brown, Walston H.  
 Browning, J. A.  
 Bruère, Robert W.  
 Brundrett, E. L.  
 Bruton, John F.  
 Bryant, Hughes
- 45 Broadway.  
 Broad & French Sts., Philadelphia, Pa.  
 P. O. Box 842, Baltimore, Md.  
 Mills Bldg., San Francisco, Cal.  
 Westminster, Md.  
 910 Irving Ave., Syracuse, N. Y.  
 150 Highland Ave., Orange, N. J.  
 269 State St., Brooklyn, N. Y.  
 20 Nassau St.  
 Criminal Courts Bldg., New York City.  
 302 Broadway.  
 141 Broadway.  
 19 Edgmont Rd., Upper Montclair, N. J.  
 409 Pearl St.  
 Harrisburg, Pa.  
 409 West 21st St.  
 92 State St., Boston, Mass.  
 30 West 46th St.  
 151 Kilsyth Road, Brighton, Mass.  
 15 William St.  
 488 Peachtree St., Atlanta, Ga.  
 Rocky Mount, N. C.  
 738 East 4th St., St. Paul, Minn.  
 Columbia University.  
 693 Fifth Ave.  
 325 Boronne St., New Orleans, La.  
 The Gunnery School, Washington, Conn.  
 20 Broad St.  
 1419 F St., Washington, D. C.  
 374 West 116th St.  
 500 Brandeis Theatre Bldg., Omaha, Neb.  
 1 East 79th St.  
 5 Nassau St.  
 10 West 49th St.  
 5125 Lindell Ave., St. Louis, Mo.  
 Kenosha, Wis.  
 141 Broadway.  
 146 Broadway.  
 160 West 59th St.  
 Croker Bldg., San Francisco, Cal.  
 1421 Chestnut St., Philadelphia, Pa.  
 33 Pine St.  
 Berlin Mills Co., Portland, Me.  
 45 Wall St.  
 1 West 72nd St.  
 32 Maple St., Nutley, N. J.  
 52nd St. & Sunset Drive, Kansas City, Mo.  
 Wilson, N. C.  
 Kansas City, Mo.

- Buckner, M. N. 26 Broad St.  
 Bullova, F. E. M. 32 Nassau St.  
 Burden, James A. Troy, N. Y.  
 Burdick, F. M. 633 West 115th St.  
 Burke, Thomas 408 Burke Bldg., Seattle, Wash.  
 Burgess, John W. 323 West 57th St.  
 Burns, Edward 904 President St., Brooklyn, N. Y.  
 Burr, Mrs. Winthrop 38 East 38th St.  
 Burrows, William H. P. O. Box 1022, Middletown, Conn.  
 Burt, Silas W. 216 West 100th St.  
 Busch, Adolphus St. Louis, Mo.  
 Bush, Irving T. 100 Broad St.  
 Butler, Joseph G., jr. Youngstown, Ohio.  
 Butler, Nicholas Murray 119 East 30th St.  
 Butler, William W. S. Stockton, Cal.  
 Cadwalader, John L. 40 Wall St.  
 Cahn, Arthur L. 27 Pine St.  
 Cahn, William L. 111 Broadway.  
 Caldwell, James H. Troy Trust Co., Troy, N. Y.  
 Calkins, John U. 2347 Prospect St., Berkeley, Cal.  
 Cammann, Hermann H. 84 William St.  
 Cannon, James G. Fourth Nat'l Bank, N. Y.  
 Carman, F. D. Herington, Kansas.  
 Carnegie, Andrew 2 East 91st St.  
 Carnochan, William E. 52 William St.  
 Carpenter, Herbert S. 71 Broadway.  
 Carpenter, William H. Columbia University.  
 Carrington, A. B. 200 Broadway.  
 Carter, Jarvis P. 52 William St.  
 Carvalho, S. S. Metuchen, N. J.  
 Casady, Simon Central State Bank, Des Moines, Ia.  
 Chandler, Percy M. 3rd & Walnut Sts., Phila., Pa.  
 Channing, J. Parke 5 Broadway.  
 Chapin, Mrs. Mary E. T. 158 Newberry St., Boston, Mass.  
 Chase, Frank F. Riverside, Cal.  
 Chase, George 309 West 74th St.  
 Chew, Ng Poon 809 Sacramento St., San Francisco, Cal.  
 Choate, Joseph H. 60 Wall St.  
 Childs, Edwards H. 59 Wall St.  
 Childs, William, jr. 42 East 14th St.  
 Chisholm, Hugh J. 200 Fifth Ave.  
 Church, William C. 51 Irving Place.  
 Cillis, Hubert 20 Nassau St.  
 Clafin, John 224 Church St.  
 Clare, William F. 317 West 108th St.  
 Clark, David T. Williamstown, Mass.  
 Clark, Emory W. 1740 Jefferson Ave., Detroit, Mich.  
 Clark, John Bates 625 West 115th St.  
 Clark, J. M. Amherst, Mass.

# LIST OF MEMBERS

505

Clark, Thomas F.	195 Broadway.
Clark, William T.	30 Church St.
Clark, W. R.	2717 N. Broadway, Los Angeles, Cal.
Clarke, E. A. S.	2 Rector St.
Clarke, Lewis L.	128 Broadway.
Clarke, Samuel B.	32 Nassau St.
Clarkson, David A.	146 East 71st St.
Clement, S. M.	737 Delaware Ave., Buffalo, N. Y.
Cleveland, F. A.	261 Broadway.
Cleveland, J. Wray	176 Broadway.
Clews, Henry	15 Broad St.
Cliff, V. D.	533 Majestic Bldg., Detroit, Mich.
Close, F. K. B.	Bankers Trust Co., 7 Wall St.
Coffin, C. A.	30 Church St.
Coffin, W. E.	902 7th St., Des Moines, Iowa.
Cogswell, Ledyard	318 State St., Albany, N. Y.
Cogswell, William Browne	Syracuse, N. Y.
Cohen, Julius Henry	15 William St.
Cohen, William N.	22 William St.
Colby, Howard A.	Plainfield, N. J.
Cole, Charles L.	49 Wall St.
Cole, Edward F.	Times Bldg., N. Y.
Coler, Bird S.	43 Cedar St.
Colgate, Gilbert	306 West 76th St.
Collier, Barron G.	Flatiron Bldg., N. Y.
Colvin, D. Leigh	655 West 177th St.
Conant, Charles A.	34 Nassau St.
Conkey, H. M.	83 Cedar St.
Connor, Washington E.	31 Nassau St.
Conway, Eustace	127 East 35th St.
Conyngton, Thomas	20 Vesey St.
Cook, William W.	44 Wall St.
Copeland, Charles C.	62-64 Worth St.
Copeland, E. L.	The Atchison, Topeka & Santa Fe R. R. Co., Topeka, Kan.
Cord, J. F.	Carlotte Hall, Md.
Corning, C. R.	36 Wall St.
Corrigan, Andrew	140 Kansas St., San Francisco, Cal.
Coshow, O. P.	Roseburg, Oregon.
Cotton, Joseph P., jr.	165 Broadway.
Couden, Elliott R.	Ridgewood Nat. Bk., Brooklyn, N. Y.
Cox, Jennings S.	319 West 80th St.
Cox, Robert Lynn	1 Madison Ave.
Coykendall, S. D.	Rondout, N. Y.
Cram, Ralph Adams	15 Beacon St., Boston, Mass.
Crane, Alexander B.	55 Wall St.
Crane, Charles R.	31 West 12th St.
Crane, Frank W.	1651 Jersey St., Quincy, Ill.
Crawford, Hanford	4442 Lindell Blvd., St. Louis, Mo.
Crider, George A.	Dickinson College, Carlisle, Pa

- Croll-Blackburne, Mrs. Ida P. 519 S. 41st St., W. Phila., Pa.  
 Crook, J. W. Amherst, Mass.  
 Crowell, John Franklin 17 West 91st St.  
 Crumplin, Cecil D. 167 Beech St., Arlington, N. J.  
 Curtis, Bracey Nogales, Ariz.  
 Curtis, W. E. 30 Broad St.  
 Curtiss, Frederic H. 63 Bay State Road, Boston, Mass.  
 Cushing, Harry A. 43 Cedar St.  
 Cutcheon, F. W. M. 24 Broad St.  
 Cutler, James G. Cutler Bldg., Rochester, N. Y.  
 Cutting, Elizabeth B. 37 Madison Ave.  
 Cutting, R. Bayard 32 Nassau St.  
 Cutting, R. Fulton 32 Nassau St.  
 Cutting, W. Bayard 32 Nassau St.  
 Dakin, Arthur H. Amherst, Mass.  
 Dashew, Leon D. 80 St. Nicholas Ave  
 Davies, Wm. Gilbert Tuxedo Park, N. Y.  
 Davis, Andrew McF. 10 Appleton St., Cambridge, Mass.  
 Davis, Daniel A. 52 West 57th St.  
 Davis, David T. 55 Liberty St.  
 Davis, Pierpont V. 851 N. Broad St., Elizabeth, N. J.  
 Dealey, James Quayle Brown Univ., Providence, R. I.  
 Debevoise, Thomas M. 62 Cedar St.  
 DeBoer, Joseph Arend Montpelier, Vt.  
 Decker, Mrs. J. W. 51 West 54th St.  
 Decker, Martin S. Public Service Commission, Albany, N. Y.  
 de Forest, H. W. 30 Broad St.  
 de Forest, R. W. 7 Washington Sq.  
 Delano, S. S. 165 Broadway.  
 Delano, William Adams 4 East 39th St.  
 de Lima, E. A. 2 Broadway.  
 Delmar, Eugene 557 West 141st St.  
 Deming, Horace E. 15 William St.  
 Demorest, William C. 60 Liberty St.  
 Dennis, Alfred L. P. 518 Wisconsin Ave., Madison, Wis.  
 Dennis, John B. P. O. Box 1792, New York City.  
 Denison, Winifred T. Dept. of Justice, Washington, D. C.  
 De Sanno, A. P. 1232 Race St., Philadelphia, Pa.  
 Devine, Edward T. 105 East 22nd St.  
 Dey, Donald 201 De Witt St., Syracuse, N. Y.  
 Dick, J. Henry 20 East 53rd St.  
 Dickinson, A. Lowes 52 William St.  
 Diefenthaler, Charles E. 190 Franklin St.  
 Diestel, William 117 Hudson St.  
 Dillon, John F. 195 Broadway.  
 Dimock, George E. 907 N. Broad St., Elizabeth, N. J.  
 Dimse, Henry 135 Fifth Ave.  
 Dodd, Allison 307 Belleville Ave., Bloomfield, N. J.  
 Dodge, Cleveland H. 99 John St.



- Doherty, Henry L.  
 Donald, James M.  
 Donovan, H. W.  
 Doremus, R. P.  
 Dougherty, J. Hampden  
 Douglas, James  
 Douglas, W.  
 Dow, Caroline B.  
 Dowling, Victor J.  
 Draper, George Otis  
 Drayton, J. Coleman  
 Drury, Frank A.  
 Dryden, John F.  
 Duggan, Stephen Pierce  
 Dulaney, Henry S.  
 Dulles, William  
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 Duncan, M. E.  
 Duncan, R. D.  
 Dunham, Edward K.  
 Dunn, Henry E.  
 Dunning, William  
 Dunwoody, William H.  
 Dupius, Charles W.  
 Durham, Knowlton  
 Earle, J. Walter  
 Earp, Edwin L.  
 Easley, Ralph M.  
 Eastman, George  
 Eastman, Joseph  
 Easton, Robert T. B.  
 Eaton, Arthur W.  
 Eaton, Mrs. Charles H.  
 Eaton, Frederick H.  
 Edison, Thomas A.  
 Egleston, Melville  
 Ehrich, Samuel W.  
 Eickhoff, Henry  
 Eidlitz, Ernest F.  
 Eisman, Max  
 Elkus, Abram I.  
 Elliott, L. L.  
 Ellsworth, William W.  
 Ellis, George W.  
 Ellis, Ralph  
 Ellwood, Charles A.  
 Ely, Robert E.  
 Emery, Thomas  
 Estabrook, A. F.  
 60 Wall St.  
 Hanover Nat. Bank, 9 Nassau St.  
 Bankers Trust Co., 7 Wall St.  
 42 Broadway.  
 27 William St.  
 99 John St.  
 Douglas, Ariz.  
 3 Gramercy Park.  
 27 Madison Ave.  
 1 Madison Ave.  
 829 Park Ave.  
 Merchants Nat. Bk., Worcester, Mass.  
 Newark, N. J.  
 College of City of New York.  
 517 W. Lombard St., Baltimore, Md.  
 115 Broadway.  
 679 Lincoln Parkway, Chicago, Ill.  
 915 Olive St., St. Louis, Mo.  
 c.o.State Trust Co., Little Rock, Ark.  
 35 West 68th St.  
 53 East 79th St.  
 Columbia University.  
 Minneapolis, Minn.  
 Western German Bk., Cincinnati, O.  
 1 Gramercy Park.  
 280 Broadway.  
 Drew Forest, Madison, N. J.  
 1 Madison Ave.  
 350 East Ave., Rochester, N. Y.  
 71 Broadway.  
 120 Broadway.  
 Pittsfield, Mass.  
 1 West 64th St.  
 165 Broadway.  
 Orange, N. J.  
 26 Cortlandt St.  
 25 Broad St.  
 604 Mills Bldg., San Francisco, Cal.  
 31 Nassau St.  
 1 West 70th St.  
 170 Broadway.  
 311 West 3rd St., Los Angeles, Cal.  
 33 East 17th St.  
 149 Broadway.  
 22 West 57th St.  
 407 College Ave., Columbia, Mo.  
 23 West 44th St.  
 Grand Central Station, N. Y.  
 15 State St., Boston, Mass.

- Estabrook, H. D. 195 Broadway.  
 Ewing, Thomas, Jr. 67 Wall St.  
 Eyer, George A. 37 Wall St.  
 Fairbanks, Charles W. Indianapolis, Ind.  
 Fairchild, Charles S. 10 West 8th St.  
 Fairchild, Samuel W. P. O. Box 1120, New York City.  
 Fairlie, John A. 1004 S. Lincoln Ave., Urbana, Ill.  
 Fancher, B. H. 530 Fifth Ave.  
 Farnsworth, Frederick E. 11 Pine St.  
 Farquhar, A. B. York, Pa.  
 Fearey, Morton L. 79 Wall St.  
 Feist, W. A. White Haven, Pa.  
 Ferguson, Mrs. F. Box 71, Halesite, Suffolk Co., N. Y.  
 Ferris, Frank A. 262 Mott St.  
 Ferry, E. Hayward 26 West 56th St.  
 Field, E. B. P. O. Drawer 1708, Denver, Colo.  
 Finley, John H. College of City of New York.  
 Findley, William L. 14 East 60th St.  
 Fischer, W. J. Nat. Bank of Com. Bldg., St. Louis, Mo.  
 Fish, Frederick P. 84 State St., Boston, Mass.  
 Fish, Mrs. John C. 19 S. Broadway, Shelby, Ohio.  
 Fisher, Irving R. 67 West 50th St.  
 Fisk, Pliny 62 Cedar St.  
 Fiske, Amos K. 7 West 43rd St.  
 Fiske, Haley 1 Madison Ave.  
 Fitzpatrick, Miss Mary C. 885 Kent Ave., Brooklyn, N. Y.  
 Flagler, J. H. 200 Broadway.  
 Fletcher, Austin B. 165 Broadway.  
 Flint, Charles R. 4 East 36th St.  
 Follett, A. D. St. Clair Bldg., Marietta, Ohio.  
 Folsom, Henry T. Llewellyn Park, Orange, N. J.  
 Foote, Allen R. 334 Cham. of Com. Bldg., Columbus, O.  
 Forbes, Allen B. 56 William St.  
 Fordyce, S. W. 703 Com'th Trust Bldg., St. Louis, Mo.  
 Forster, William 59 Wall St.  
 Forsyth, Ralph Kay 41 Pease St., Kingston, N. Y.  
 Foster, Frederic de P. 18 Wall St.  
 Fowler, Carl H. 96 Broadway.  
 Fox, Hugh F. 109 East 15th St.  
 Fox, William H. Taunton, Mass.  
 Frame, Andrew J. 303 Grand Ave., Waukesha, Wis.  
 Frank, Julius J. 52 William St.  
 Frankfort, M. 15 East 48th St.  
 Frankland, Frederick William "Okataina," Foxton, Manawatu, New Zealand.  
 Franklin, Fabian 527 West 110th St.  
 Franklin, Thomas H. San Antonio, Texas.  
 Franks, Robert A. Home Trust Co., Hoboken, N. J.  
 Fraser, George C. 20 Exchange Place.  
 Fratt, F. W. 3928 Warwick Blvd., Kansas City, Mo.

# LIST OF MEMBERS

509

Freiberg, Maurice J.	3576 Alaska Ave., Cincinnati, Ohio.
Frelinghuysen, G. G.	32 Liberty St.
French, John	59 Wall St.
French, Nathaniel	Davenport, Iowa.
French, S. Barton	15 West 51st St.
Frew, Walter E.	13 William St.
Frick, Henry C.	640 Fifth Ave.
Friedman, H. G.	Public Service Com., Tribune Bldg.
Fries, F. H.	Winston-Salem, N. C.
Frissell, A. S.	530 Fifth Ave.
Fuller, Paul	2 Rector St.
Furnya, M.	216 Second Ave., S., Seattle, Wash.
Gaillard, William D.	42 Broadway.
Gammell, William	50 S. Main St., Providence, R. I.
Gans, Mrs. Howard S.	401 West End Ave.
Garanflo, W. H.	State Nat. Bank, Little Rock, Ark.
Gardiner, Robert H.	Gardiner, Maine.
Gardner, Henry B.	54 Stimson Ave., Providence, R. I.
Gardner, Rathbone	10 Weybosset St., Providence, R. I.
Garrett, Robert	506 Continental Bldg., Baltimore, Md.
Garst, Julius	Worcester, Mass.
Garvan, Francis P.	119 East 31st St.
Gavegan, Edward J.	303 West End Ave.
Gavegan, Mrs. Edward J.	303 West End Ave.
Geer, George J.	23 East 64th St.
Gellatly, William	Cranford, N. J.
Gerard, James W.	165 Broadway.
Gifford, James N.	5 Nassau St.
Gilbert, Alexander	Market & Fulton Nat. Bank, N. Y.
Gildersleeve, Ferdinand	Gildersleeve, Conn.
Gillespie, Robert McM.	8 West 53rd St.
Gillies, Edwin J.	245 Washington St.
Gillin, John Lewis	Iowa City, Iowa.
Gilluby, George K.	1221 Dean St., Brooklyn, N. Y.
Gilpin, William Jay	77 Cedar St.
Glasson, William H.	Trinity College, Durham, N. C.
Glenn, John M.	136 East 19th St.
Golding, John N.	9 Pine St.
Goldman, Henry	60 Wall St.
Goldzier, Morris	657 Broadway.
Gompers, Samuel	801 G St., N.W., Washington, D. C.
Gonzalez, Antonio C.	32 Broadway.
Goodnow, F. J.	49 Riverside Drive.
Gordon, F. E.	West Main St., Conneaut, Ohio.
Gore, Thomas P.	Washington, D. C.
Gorton, Adelos	Maple Glen, Montgomery Co., Pa.
Gottheil, Paul	148 West 75th St.
Gould, Mrs. Charles J.	150 West 59th St.
Gould, E. R. L.	15 West 38th St.

- Gould, George J. 195 Broadway.  
 Gowen-Stobo, John 1735 McCormick Bldg., Chicago, Ill.  
 Gram, Jesse P. 34 Nassau St.  
 Grant, Frank L. 229 West 97th St.  
 Grant, Percy S. 7 West 10th St.  
 Graves, E. W. First Nat. Bank, Douglas, Ariz.  
 Graves, Nelson Z. Philadelphia, Pa.  
 Gray, R. S. 1921 Telegraph Ave., Oakland, Cal.  
 Green, Herbert 1023 Peoples Gas Bldg., Chicago, Ill.  
 Greene, Francis V. 113 East 30th St.  
 Greene, William H. Arch & 16th Sts., Phila., Pa.  
 Greenhut, Benedict J. 6th Ave. & 18th St.  
 Greeno, F. L. 909 Wilder Ave., Rochester, N. Y.  
 Gregory, G. E. 55 Wall St.  
 Griggs, Edward Howard Spuyten Duyvil, N. Y.  
 Griggs, Herbert L. 48 Wall St.  
 Griswold, Chester 43 Exchange Place.  
 Groom, Wallace P. Academy of Music Bldg., Brooklyn, N. Y.  
 Guggenheim, Simon 165 Broadway.  
 Gunther, Franklin L. 532 5th Ave.  
 Guthrie, William B. 515 West 111th St.  
 Guthrie, William D. 28 Park Ave.  
 Guye, Charles Henry 44 West 69th St.  
 Haas, Kalman 7 East 69th St.  
 Haas, W. D. Bunkie, La.  
 Hackett, Corcellus H. 31 Union Square.  
 Haeselbarth, Adam C. Leonia, N. J.  
 Hager, William M. 165 Broadway.  
 Haines, Charles Grove Whitman College, Walla Walla, Wash.  
 Hale, George D. 1059 Lake Ave., Rochester, N. Y.  
 Hale, Ledyard P. Capitol, Albany, N. Y.  
 Hall, John R. 100 Broadway.  
 Hall, Thomas C. 700 Park Ave.  
 Halliday, Reginald Englewood, N. J.  
 Hamilton, Foster Bank of Alabama, Ensley, Ala.  
 Hamilton, John L. Hoopestown, Ill.  
 Hamlin, Philip Telephone Bldg., Denver, Colo.  
 Hammill, C. W. 71 Broadway.  
 Hammond, John Hays 71 Broadway.  
 Hammond, John Henry 40 Wall St.  
 Hanaman, Charles E. P. O. Box 527, Troy, N. Y.  
 Handy, Parker D. 22 Pine St.  
 Hanna, Charles A. 2 West 89th St.  
 Hardings, W. P. First Nat. Bank, Birmingham, Ala.  
 Hardon, Henry W. 60 Wall St.  
 Harkins, Walter S. Prestonsburg, Ky.  
 Harkness, W. L. 12 Broadway.  
 Harned, Franklin M. 17 Shepherd Ave., Brooklyn, N. Y.  
 Harper, J. Henry Franklin Square, N. Y.

# LIST OF MEMBERS

511

Harris, Albert H.	135 Central Park West, N. Y.
Harris, John F.	25 Pine St.
Harrison, W. Z.	Park City, Utah.
Hartshorn, Stewart	Short Hills, N. J.
Harvey, George	Harper Bros., Franklin Sq.
Hasslacher, Jacob	100 William St.
Hastings, H. S.	St. Marys, Elk Co., Pa.
Hatch, A. J.	20 Broad St.
Hatch, Edward W.	3 S. William St.
Hatfield, Charles E.	West Newton, Mass.
Hathaway, Charles	45 Wall St.
Hausman, Carl A.	96 Broadway.
Hawkins, Eugene D.	51 East 67th St.
Hawley, J. F., jr.	3530 3rd St., San Diego, Cal.
Haynes, John R.	945 S. Figueroa, Los Angeles, Cal.
Hazard, F. R.	P. O. Box 2, Syracuse, N. Y.
Healy, A. Augustus	90 Gold St.
Heaney, Frank J.	351 Canal St.
Hebbard, Edgar C.	28 Nassau St.
Hecker, Frank J.	915 Union Trust Bldg., Detroit, Mich.
Hedges, Job E.	165 Broadway.
Heller, Max	1828 Morengo St., New Orleans, La.
Henderson, Edward C.	52 William St.
Henderson, Nathalie	27 East 65th St.
Hentz, Henry	22 William St.
Hepburn, A. Barton	83 Cedar St.
Hepburn, Mrs. A. Barton	205 West 57th St.
Herczeg, Josika	28 West 10th St.
Herrman, Henry S.	54 East 80th St.
Hermann, Ferdinand	20 East 80th St.
Hertenstein, Frederick	Avondale, Cincinnati, O.
Hicks, F. C.	7 Wall St.
Hiester, A. V.	320 Race Ave., Lancaster, Pa.
Higginson, Henry L.	44 State St., Boston, Mass.
Hill, James J.	32 Nassau St.
Hillhouse, Mrs. James	Sachem's Wood, New Haven, Conn.
Hinckley, F. E.	U.S.Court for China, Shanghai, China.
Hine, Francis L.	2 Wall St.
Hines, W. D.	52 William St.
Hinsdale, E. B.	Hotel Manhattan.
Hirsch, Morris J.	111 Broadway.
Hirsch, Robert B.	35 Mercer St.
Hirth, Friedrich	401 West 118th St.
Hitchcock, Frederick S.	Box 202, New London, Conn.
Hoadley, Horace G.	16 Fiske St., Waterbury, Conn.
Hobbs, F. G.	284 Columbus Ave.
Hoe, Mrs. Robert	11 East 36th St.
Holbrook, Percy	The Lucerne, 79th St. & Amsterdam Ave.
Holden, Arthur J.	Bennington, Vt.

- Hollister, George Clay  
 Hollister, Granger A.  
 Holloway, Harry D.  
 Holt, Henry  
 Holter, Edwin O.  
 Homer, C. S.  
 Hope, G. L.  
 Hopkins, George B.  
 Hoppin, William W.  
 Hornblower, William B.  
 Horst, George D.  
 Horton, Lydiard  
 Howard, Frederick B.  
 Howe, Frank E.  
 Howell, Usher B.  
 Howland, Horace F.  
 Hoyt, Franklin C.  
 Hoyt, Theodore R.  
 Hubbard, Walter C.  
 Hughes, Charles E.  
 Hulet, J. R.  
 Humphreys, Alexander  
 Huntington, Archer M.  
 Hutchinson, Edward S.  
 Hutchinson, George H.  
 Huttig, C. H.  
 Hyde, Henry St. John  
 Ichinomiya, R.  
 Imhoff, C. H.  
 Ingham, William H.  
 Ingraham, Arthur  
 Irwin, I. I., jr.  
 Iselin, Adrian, jr.  
 Iselin, Mrs. W. E.  
 Isman, Felix  
 Ivins, William M.  
 Jackson, Percy  
 James, Mrs. Arthur Curtiss  
 James, Walter B.  
 James, Mrs. Walter B.  
 Janvier, Charles  
 Jarvie, James N.  
 Jay, Pierre  
 Jefferson, Howard McN.  
 Jeidels, Otto  
 Jennings, Frederic B.  
 Jess, Stoddard  
 Jewett, George L.  
 Johnson, C. W.
- New Rochelle, N. Y.  
 Rochester, N. Y.  
 508 Land Title Bldg., Phila., Pa.  
 711 Madison Ave.  
 Mount Kisco, N. Y.  
 10 West 43rd St.  
 First Nat. Bank, Fessenden, N. Dak.  
 52 Broadway.  
 52 William St.  
 30 Broad St.  
 Reading, Pa.  
 Hartley Hall, Columbia University.  
 56 Arlington St., Brockton, Mass.  
 Troy, N. Y.  
 Riverhead, N. Y.  
 475 Fifth Ave.  
 66 Third Ave.  
 72 Gold St.  
 Coffee Exchange Bldg., N. Y.  
 Washington, D. C.  
 Holbrook, Ariz.  
 Stevens Inst. Tech., Hoboken, N. J.  
 1083 Fifth Ave.  
 34 S. State St., Newton, Pa.  
 First Nat. Bank, Fairbanks, Alaska.  
 St. Louis, Mo.  
 210 East 18th St.  
 55 Wall St.  
 195 Broadway.  
 Algona, Iowa.  
 80 Irving Place.  
 San Diego, Cal.  
 711 Fifth Ave.  
 745 Fifth Ave.  
 1328 S. Penn Sq., Philadelphia, Pa.  
 27 William St.  
 43 Cedar St.  
 92 Park Ave.  
 17 West 54th St.  
 17 West 54th St.  
 Canal-Louisiana Bank & Trust Co., New Orleans, La.  
 66 Broadway.  
 40 Wall St.  
 80 Downing St., Brooklyn, N. Y.  
 Behrenstr. 32, Berlin, Germany.  
 86 Park Ave.  
 2133 Harvard Bldg., Los Angeles, Cal.  
 20 Fifth Ave.  
 201 High St., Holyoke, Mass.



Johnson, Grafton	Greenwood, Ind.
Johnson, John Theodore	417 48th St., Brooklyn, N. Y.
Johnson, Rankin	37 Madison Ave.
Johnston, Allen W.	509 State St., Schenectady, N. Y.
Jonas, Stephen	60 Wall St.
Jones, Breckinridge	Miss. Valley Trust Co., St. Louis, Mo.
Jones, Charles H.	20 Broad St.
Jones, Dwight A.	34 West 51st St.
Jones, E. Milton	Columbia University.
Jones, James H.	Box 89, R. F. D. No. 1, Lakeland, Fla.
Joy, Edmund Steele	26 Halsey St., Newark, N. J.
Judson, Henry I.	96 Broadway.
Juilliard, A. D.	70 Worth St.
Kahn, Otto H.	52 William St.
Kastor, Hugo	26-28 Cedar St.
Kaul, John L.	Birmingham, Ala.
Kaupas, A.	64 Church St., Pittston, Pa.
Kebabian, George S.	60 Wall St.
Keep, Charles H.	60 Broadway.
Kehew, Mrs. Mary Morton	292 Chestnut St., Boston, Mass.
Kelley, David J.	29 Broadway.
Kellogg, J. H.	Battle Creek, Mich.
Kelly, J. A.	Lebanon, Ky.
Kennett, Alfred Q.	5099 McPherson Ave., St. Louis, Mo.
Kenney, James W.	234 Seaver St., Roxbury, Boston, Mass.
Kent, Fred I.	7 Wall St.
Kent, Robert D.	Passaic, N. J.
Kenyon, Robert N.	49 Wall St.
Keplinger, Charles W.	828 N. Cleveland Ave., Canton, O.
Kerr, David S.	516 Quebec Bk. Bldg., Montreal, Can.
Kerr, Walter	52 Wall St.
Kespohl, Julius	1855 Jersey St., Quincy, Ill.
Kessler, George A.	20 Beaver St.
Kidder, C. G.	27 William St.
Kidder, Edward H.	17 Battery Place.
Kilborn, Horace M.	National City Bank.
Kilbreth, James T.	45 Broadway.
King, Miss Elizabeth G.	48 College St., Providence, R. I.
King, Joseph H.	American Nat. Bank, Hartford, Conn.
King, Landreth H.	Grand Central Depot, N. Y.
Kingsley, Darwin P.	346 Broadway.
Kingsley, W. M.	45 Wall St.
Kinsey, Oliver P.	Valparaiso, Ind.
Kip, Henry S.	7 Wall St.
Kirchwey, George W.	Columbia University.
Knapp, Mrs. Harry K.	34 East 35th St.
Knapp, Martin A.	Interstate Commerce Commission, Washington, D. C.
Knauth, Antonio	39 West 76th St.
Knauth, Mrs. Percival	302 West 76th St.

Kneedler, W. H.	Bridgeport, Pa.
Kneeland, Yale	117 East 60th St.
Knox, Herbert Allen	198 Broadway.
Krebs, S. L.	Care of John Wanamaker, Phila., Pa.
Krech, Mrs. Alvin	26 West 58th St.
Kreuzpointer, Paul	1400 Third Ave., Altoona, Pa.
Kudlich, H. C.	299 Broadway.
Kuhn, Arthur W.	308 West 92nd St.
Kursheedt, Manuel A.	302 Broadway.
Kurtz, William B.	321 Chestnut St., Phila., Pa.
Kuser, Anthony R.	Bernardsville, N. J.
La Follette, W. T.	Silvan Springs, Ark.
Lake, Emma S.	309 West 93rd St.
Lambert, Adrian V. S.	168 East 71st St.
Lamberton, Alexander Byron	303 East Ave., Rochester, N. Y.
Lamont, Thomas W.	2 Wall St.
Langeloth, Jacob	Riverside, Conn.
Largey, M. S.	State Savings Bank, Butte, Mont.
Larremore, Wilbur	32 Nassau St.
Lauterbach, Edward	22 William St.
Lauterbach, Mrs. Edward	761 Fifth Ave.
Lawrence, Samuel C.	8 Rural Ave., Medford, Mass.
Lawrence, William W.	749 Fifth Ave.
Leach, A. B.	149 Broadway.
Leary, William V.	173 West 87th St.
Lebermuth, I.	Landerdale P. O., St. James Parish, La.
Lee, E. A.	Oakland Road, S. Orange, N. J.
Leffingwell, R. C.	52 William St.
Legg, Chester Arthur	63 Board of Trade Bldg., Chicago, Ill.
Leland, Arthur S.	40 Exchange Place.
Leland, Francis L.	N. Y. County Nat. Bank, 14th St. & 8th Ave.
Lemaghi, Louis, F.	Collinsville, Ill.
Leshner, Arthur L.	670 Broadway.
Lesinsky, Albert R.	220 Broadway.
Levy, Charles E.	Cotton Exchange Bldg.
Levy, Jefferson M.	27 Pine St.
Lewisohn, Adolph	42 Broadway.
Lewisohn, Albert	11 Broadway.
Lewisohn, Sam. A.	42 Broadway.
Leupp, William H.	37 Wall St.
Lichtenstein, Alfred	171 West 71st St.
Lincoln, Lowell	345 Broadway.
Lindsay, John D.	34 West 11th St.
Lindsay, Samuel McCune	105 East 22nd St.
Lipman, F. L.	Wells Fargo Nevada Nat. Bank, San Francisco, Cal.
Lippitt, Costello	Norwich, Conn.
Littauer, Lucius N.	715 Broadway.
Littleton, Martin W.	2 Rector St.
Livermore, Arthur L.	30 Broad St.

# LIST OF MEMBERS

515

Loeb, Isidor	Univ. of Columbia, Columbia, Mo.
Loeb, James	52 William St.
Loeb, Otto S.	35 Wail St.
Loeser, Vincent	320 West 108th St.
Lord, Chester S.	The Sun, 170 Nassau St.
Low, Seth	30 East 64th St.
Low, William Gilman, jr.	107 East 78th St.
Lowengard, Otto	21 West 68th St.
Lowry, Robert J.	Atlanta, Ga.
Luce, H. J.	4 East 52nd St.
Lummis, William	320 West 107th St.
Lundien, E. M.	Dayton, Iowa.
Lydig, Philip M.	38 East 52nd St.
Lyle, John S.	Tenafly, N. J.
Lyman, Hart	New York Tribune.
Lyons, Samuel Clay	49 Exchange Place.
McBain, Howard Lee	Madison, Wis.
McCall, John C.	346 Broadway.
McCarroll, William	758 St. Marks Ave., Brooklyn, N. Y.
McCarty, Barclay E.	33 Wall St.
McCausland, George G.	P. O. Box 68, Kendal Green, Mass.
McCord, William H.	Greenwich, Conn.
McCready, N. L.	38 Wall St.
McDougal, Elliott C.	197 Cleveland Ave., Buffalo, N. Y.
McElderry, H. L.	Talladega, Ala.
McGarrah, G. W.	33 Wall St.
McGinley, J. R.	5000 Forbes St., Pittsburg, Pa.
McGuckin, William G.	176 West 105th St.
McIntosh, C. K.	Bank of California, San Francisco.
McIntyre, John F.	25 Broad St.
McIntyre, William H.	201 W. 55th St.
McKeag, Edwin C.	233 Somerset St., New Brunswick, N.J.
McKenna, Thomas P.	41 Wall St.
McKeon, John C.	Hempstead, N. Y.
McLaughlin, Arthur W.	128 Broadway.
McLean, A. W.	Lumberton, N. C.
McMillin, Emerson	40 Wall St.
McQueen, W.	Ludowici, Ga.
McReynolds, J. C.	141 Broadway.
McRoberts, Samuel	55 Wall St.
Maas, Charles O.	87 Nassau St.
Mabon, William	Wards Island, N. Y.
Mabon, James	59 West 70th St.
MacDonald, Charles B.	71 Broadway.
MacDuffie, Rufus L.	Bronxville, N. Y.
Mackenzie, James C.	Dobbs Ferry, N. Y.
Macy, Miss Carroll	Birch Corners, Hewlett, L. I.
Macy, V. Everit	68 Broad St.
Macy, Mrs. V. Everit	Scarborough-on-Hudson, N. Y.

- Mackay, Clarence H. 253 Broadway.  
 MacLean, James A. Moscow, Idaho.  
 MacQuoid, C. W. Roselle, N. J.  
 Mahoney, Stephen A. 630 Dwight St., Holyoke, Mass.  
 Main, William A. 214 Broadway.  
 Mairs, Mrs. E. H. Irvington-on-Hudson, N. Y.  
 Mandelbaum, Miss M. 205 West 57th St.  
 Manning, William T. 27 West 25th St.  
 Mansfield, Howard 49 Wall St.  
 Marden, Francis Skiddy 449 Park Ave.  
 Marie, Leon 1 West 54th St.  
 Markle, John Jeddo, Pa.  
 Marks, Marcus M. 687 Broadway.  
 Marling, Alfred E. 35 West 47th St.  
 Marsh, Robert McM. 45 West 11th St.  
 Marshall, Charles C. 30 Broad St.  
 Marston, Edgar L. 24 Broad St.  
 Marston, Edwin S. 16-22 William St.  
 Martin, Bradley, Jr. 6 East 87th St.  
 Martin, Edward S. 178 East 64th St.  
 Martin, John Grymes Hill, Stapleton, S. I.  
 Martin, R. W. 25 Nassau St.  
 Martindale, J. B. 270 Broadway.  
 Marx, Otto Birmingham, Ala.  
 Masters, Miss L. B. Dobbs Ferry, N. Y.  
 Mastin, J. Edward 3 Broad St.  
 Mather, Robert 165 Broadway.  
 Mather, Samuel Western Reserve Bldg., Cleveland, O.  
 Maurice, William G. Hot Springs, Ark.  
 Mead, Joseph H. County Trust Co., White Plains, N. Y.  
 Melville, Frank 162 Columbia Heights, Brooklyn, N. Y.  
 Melvin, E. C. Selma National Bank, Selma, Ala.  
 Menken, S. Stanwood 34 West 52nd St.  
 Mereness, Newton D. 520 West 123rd St.  
 Merrick, H. F. Kensington, Ohio.  
 Mershon, Ralph D. 65 W. 54th St.  
 Metcalfe, Henry 147 Fourth Ave.  
 Meyer, Eugene, jr. 7 Wall St.  
 Milburn, John G. 16 West 10th St.  
 Miller, Charles G. 157 East 62nd St.  
 Miller, George N. 811 Madison Ave.  
 Miller, Henry F. 44 Pine St.  
 Miller, Nathan J. 437 West End Ave.  
 Miller, Samuel H. 121 E. Union Ave., Bound Brook, N. J.  
 Mills, W. McMaster 753 Fifth Ave.  
 Miner, Maud E. 19 West 9th St.  
 Mitchell, Mrs. Clarence Blair Far Hills, N. J.  
 Mitchell, Edward Page Sun Office, New York City.  
 Mitchell, Francis B. The Post Express, Rochester, N. Y.

# LIST OF MEMBERS

517

Mix, M. W.  
Moffat, George B.  
Moore, J. B.  
Morawetz, Victor A.  
Morgan, J. P.  
Morgan, George Wilson  
Morris, Dave H.  
Morrow, Dwight W.  
Morse, Anson D.  
Morton, Henry Samuel  
Moulton, Irving F.  
Muhleman, Maurice L.  
Mulry, Thomas M.  
Mundy, Floyd Woodruff  
Munn, John P.  
Murphy, Franklin  
Mussey, Henry Raymond  
Myers, Nathaniel  
Nadal, Charles C.  
Neale, E. J.  
Nellamy, Vincent  
Nelson, Richard Marshall  
Nevius, David  
Newcomer, Waldo  
Newton, Howard D.  
Nicholson, John  
Nicoll, DeLancey  
Noble, Alfred  
North, S. S.  
Nottingham, William  
Oakman, Walter G.  
Obermayer, C. J.  
Ochs, Adolph S.  
O'Day, Mrs. Eliza  
Oeland, Isaac R.  
Ogden, Rollo  
Olin, Stephen H.  
Olney, Peter B.  
Opdyke, William S.  
Oppenheim, Edward L.  
Ordway, Samuel H.  
Osborn, William Church  
Osborne, Thomas M.  
Osgood, Herbert L.  
Owens, W. W.  
Page, Edward D.  
Page, William H.  
Pam, Max  
Parish, Edward C.

Dodge Mfg. Co., Mishawaka, Ind.  
5 Nassau St.  
Columbia University.  
44 Wall St.  
23 Wall St.  
32 Liberty St.  
19 East 70th St.  
62 Cedar St.  
Amherst College, Amherst, Mass.  
141 Broadway.  
2199 Derisadero St., San Francisco, Cal.  
15 William St.  
543 West 21st St.  
20 Broad St.  
18 West 58th St.  
1027 Broad St., Newark, N. J.  
Columbia University.  
135 Central Park West.  
142 East 35th St.  
349 Beacon St., Lowell, Mass.  
2 Rector St.  
Lilington, N. C.  
160 Fifth Ave.  
Nat. Exchange Bank, Baltimore, Md.  
371 N. Broad St., Norwich, N. Y.  
43 Cedar St.  
31 Nassau St.  
501 West 120th St.  
Unadilla, N. Y.  
701 Walnut St., Syracuse, N. Y.  
62 Cedar St.  
502 8th Ave., Brooklyn, N. Y.  
New York Times, Times Sq.  
119 East 36th St.  
189 Montague St., Brooklyn, N. Y.  
Evening Post, 20 Vesey St.  
32 Nassau St.  
68 William St.  
20 Nassau St.  
104 East 65th St.  
27 William St.  
71 Broadway.  
Public Service Com., Albany, N. Y.  
526 West 150th St.  
289 Clinton Ave., Brooklyn, N. Y.  
60 Worth St.  
32 Liberty St.  
71 Broadway.  
52 Wall St.

Parish, Henry	52 Wall St.
Parker, Robert A.	81 Fulton St.
Parsons, Herbert	52 William St.
Parsons, John E.	52 William St.
Parsons, W. L.	Rockingham, N. C.
Partridge, Frank H.	140 West 69th St.
Paskus, Benjamin G.	128 Broadway.
Patterson, John L.	Roanoke Rapids, N. C.
Paxon, Frederic J.	Box 815, Atlanta, Ga.
Peabody, R. C.	11 Broadway.
Pearson, F. S.	25 Broad St.
Peaslee, Edward H.	17 Washington Sq.
Peck, Harry Thurston	468 Riverside Drive.
Perkins, George E.	41 Union Square.
Perkins, George W.	23 Wall St.
Perrin, John	Amer. Nat. Bank, Indianapolis, Ind.
Perry, Mrs. William A.	7 East 56th St.
Peters, William R.	92 William St.
Peyser, Julius I.	Mer.&Mech.Sav.Bk., Washington, D.C.
Phelan, Thomas A.	93 Front St.
Phelps, Ansel	29 Wall St.
Phelps, Mrs. Marion Von R.	205 West 57th St.
Philips, Frederic D.	15 William St.
Phillips, Louis S.	49 Broadway.
Phipps, Mrs. Henry	1063 Fifth Ave.
Phoenix, Lloyd	21 East 33rd St.
Pierce, Franklin	312 West 103rd St.
Pierce, Winslow S.	120 Broadway.
Pierson, Lewis E.	Irving Exchange Nat. Bank.
Pinkus, Frederick S.	103 Franklin St.
Place, Ira A.	Grand Central Station.
Platt, Edward T.	205 West 57th St.
Plaut, Joseph	120 William St.
Plimpton, George A.	70 Fifth Ave.
Polk, William M.	7 East 36th St.
Pollak, Francis D.	49 Wall St.
Pollock, J. S.	606 West 2nd St., Little Rock, Ark.
Poor, Ruel W.	200 Fifth Ave.
Porter, William H.	23 Wall St.
Post, Abram S.	81 Fulton St.
Post, James H.	129 Front St.
Potter, Mrs. Blanche	33 East 38th St.
Potter, Frederick	71 Broadway.
Potter, James Brown	59 Wall St.
Powell, Henry M.	51 Chambers St.
Powell, Thomas Reed	Livingston Hall, Columbia Univ.
Prim, C. A.	Baniffy, Fla.
Pruyn, Robert C.	60 State St., Albany, N. Y.
Pryer, Charles	P. O. Box 647, New Rochelle, N. Y.



Purdy, W. E.	Chase Nat. Bank, 83 Cedar St.
Purrington, William A.	43 West 11th St.
Putney, Edmonds	116 West 73rd St.
Quackenbush, James L.	362 Riverside Drive.
Quimby, Charles E.	278 West 86th St.
Quinn, John	31 Nassau St.
Randolph, Stuart F.	31 Nassau St.
Ratcliffe, J. P.	Cunningham, Kansas.
Raven, A. A.	864 President St., Brooklyn, N. Y.
Rawles, William A.	924 East 3rd St., Bloomington, Ind.
Read, William A.	25 Nassau St.
Redman, A. W.	308 S. Broadway, Los Angeles, Cal.
Reed, Charles	38 N. Moore St.
Reed, Frederic H.	120 Riverside Drive.
Reese, Richard	Equitable Guar. & Trust Co., Wilmington, Del.
Remick, William H.	37 Wall St.
Revell, Fleming H.	Riverdale-on-Hudson.
Rhoades, John Harsen	45 Wall St.
Rhodes, R. R.	1205 Citizens Bldg., Cleveland, O.
Rice, William M. J.	15 West 67th St.
Rich, Charles A.	320 Fifth Ave.
Ridge, W. N.	302 Broadway.
Ripley, E. A.	Mandan, N. Dak.
Rives, George L.	32 Nassau St.
Robb, J. Hampden	23 Park Ave.
Robbins, R. D., jr.	Suisun, Cal.
Robin, Joseph G.	Urbana, Ill.
Robinson, Charles L.	56 West 124th St.
Robinson, George Henry	35 Cedar St.
Robinson, James H.	567 West 113th St.
Robinson, Nelson L.	381 Central Park West.
Rockefeller, P. A.	26 Broadway.
Roeser, John E.	795 St. Nicholas Ave.
Rogers, James H.	60 Wall St.
Rollins, Jordan J.	2 East 45th St.
Roome, William J.	101 East 57th St.
Root, Elihu	Washington, D. C.
Roper, C. L.	Chapel Hill, N. C.
Rosen, Felix	25 Broad St.
Rosewater, Victor	3525 Farnam St., Omaha, Neb.
Ross, P. Sanford	277 Washington St., Jersey City, N.J.
Rossiter, Van Wyck	Nyack-on-Hudson, N. Y.
Rothschild, Maurice	49 West 72nd St.
Rounds, Arthur C.	96 Broadway.
Rowe, William V.	133 East 38th St.
Rudd, Channing	15 Wall St.
Rumsey, Mrs. Charles	Arden, Orange Co., N. Y.
Runtz-Rees, Miss Caroline	Rosemary Hall, Greenwich, Conn.
Rushmore, Charles E.	40 Wall St.

Ryle, Arthur	225 4th Ave.
Sabin, Charles H.	28 Nassau St.
Sachs, Harry	60 Wall St.
Sachs, Julius	Teachers College, West 116th St.
Sachs, Ralph L.	28 West 22nd St.
Sachs, Samuel	46 West 70th St.
Sage, Dean	49 Wall St.
Samson, C. F.	20 Broad St.
Sanguinette, S. S.	542 West 124th St.
Sargent, William G.	90 West St.
Satterlee, Herbert L.	37 East 36th St.
Scallon, William	55 Liberty St.
Schefer, Carl	40 West 37th St.
Schermerhorn, F. Augustus	25 Liberty St.
Schiff, Jacob H.	27 Pine St.
Schiff, Mortimer L.	William & Pine Sts.
Schlapp, Max G.	40 East 41st St.
Schley, Grant B.	80 Broadway.
Schott, Charles M., jr.	25 Broad St.
Schreiber, George G.	55 Liberty St.
Schurz, Miss Agatha	24 East 91st St.
Schwab, Gustav H.	4 East 48th St.
Scoles, Richard J.	Passaic, N. J.
Scudder, Edward M.	59 Wall St.
Seager, Henry R.	Columbia University.
Seaman, Alfred P. W.	147 West 87th St.
Sears, J. H.	35 West 32nd St.
Seelig, S.	5025 McPherson Ave., St. Louis, Mo.
Seligman, E. R. A.	324 West 86th St.
Seligman, Isaac N.	1 William St.
Seligman, Jefferson	1 William St.
Sexton, Lawrence E.	34 Pine St.
Shackleton, James H.	Fidelity Trust Co., Newark, N. J.
Shaffner, Henry F.	403 High St., Winston-Salem, N. C.
Shaw, Albert	13 Astor Place.
Shaw, Leslie M.	929 Chestnut St., Phila., Pa.
Sheldon, George R.	24 East 38th St.
Shepard, Edward M.	128 Broadway.
Shepherd, W. R.	468 Riverside Drive.
Sherman, Gordon E.	Ogden Place, Morristown, N. J.
Shoemaker, Herbert B.	50 Pine St.
Sickles, Daniel E.	23 Fifth Ave.
Sidenberg, George M.	45 East 49th St.
Siegel, Henry	Simpson Crawford Co.
Silliman, Reuben D.	609 W. 158th St.
Simmons, Charles H.	110 Center St.
Simmons, Frank H.	110 Center St.
Simpson, George W.	90 West Broadway.
Simpson, John W.	62 Cedar St.

# LIST OF MEMBERS

521

Skitt, Alfred	474 N. Broadway, Yonkers, N. Y.
Slade, C. C.	83 Cedar St.
Sloan, Benson Bennett	38 Wall St.
Sloane, William M.	105 East 69th St.
Smith, C. P.	Burlington, Vt.
Smith, Eugene	39 West 68th St.
Smith, Munroe	169 East 70th St.
Smith, W. A.	412 Madison Ave.
Smith, Nelson	151 West 48th St.
Smyth, Herbert C.	15 Wall St.
Snow, Elbridge G.	56 Cedar St.
Snyder, V. P.	31 Nassau St.
Soper, Alexander C.	Lakewood, N. J.
Soper, Erastus B.	Emmetsburg, Iowa.
Spence, Miss Clara B.	30 West 55th St.
Spencer, Henry R.	Ohio State Univ., Columbus, Ohio.
Spiegelberg, F.	36 West 76th St.
Sprague, Frank J.	165 Broadway.
Standish, Myles	20 Nassau St.
Stangeland, Charles E.	5915 Erie St., Chicago, Ill.
Stanley, Edward O.	176 Broadway.
Stason, Edwin J.	Sioux City, Iowa.
Steele, Charles	23 Wall St.
Steinman, H. G.	Cullom, Ill.
Stern, Louis	993 Fifth Ave.
Sterrett, J. E.	54 William St.
Stetson, Francis Lynde	15 Broad St.
Stevens, F. C.	75 Elk St., Albany, N. Y.
Stevens, Mrs. Joseph S.	Kerby Hill, Jericho, L. I.
Stevens, T. Jefferson	81 Fulton St.
Stewart, John A.	135 Broadway.
Stewart, William	31 Nassau St.
Stiger, William D.	62 William St.
Stiger, William E.	138 West 73rd St.
Stillman, Charles	21 West 48th St.
Stillman, Leland S.	15 William St.
Stockton, Philip	17 Court St., Boston, Mass.
Stoddard, John M.	542 West 112th St.
Stokes, Anson Phelps	100 William St.
Stokes, J. G. Phelps	100 William St.
Stone, Harlan F.	49 Wall St.
Straus, Isidor	Broadway & 34th St.
Straus, Percy S.	Broadway & 34th St.
Straus, Simon W.	Straus Bldg, Chicago, Ill.
Strauss, Albert	1 William St.
Strauss, Charles	141 Broadway.
Strauss, Frederick	1 William St.
Strohmeyer, George W.	Milwaukee Nat. Bank, Milwaukee, Wis.
Strong, Benjamin, jr.	7 Wall St.

Stroock, S. M.	320 Broadway.
Sturgis, F. K.	17 East 51st St.
Sturhahn, C. F.	84 William St.
Sullivan, J. J.	Central Nat. Bank, Cleveland, O.
Swan, Robert	25 Broad St.
Swayne, Francis B.	149 Broadway.
St. Goar, F.	35 Wall St.
Taft, Henry W.	36 West 48th St.
Taintor, Charles N.	41 West 76th St.
Talbert, Joseph T.	Nat. City Bank, 55 Wall St.
Taylor, Carl	24 Broad St.
Taylor, Henry R.	30 Pine St.
Taylor, William H.	17 Battery Place.
Teele, Arthur W.	30 Broad St.
Tefft, Erastus T.	5 Nassau St.
Terhune, N.	32 Nassau St.
Terry, Charles Thaddeus	100 Broadway.
Tesla, Nikola	Hotel Waldorf Astoria.
Teter, Lucius	5637 Woodlawn Ave., Chicago, Ill.
Thacher, Thomas	62 Cedar St.
Thaw, A. Blair	135 East 66th St.
Thomas, Albert A.	90 Pearl St., Middleboro, Mass.
Thomas, Allen M.	35 West 54th St.
Thomas, Augustus	New Rochelle, N. Y.
Thomen, Otto J.	33 Pine St.
Thompson, Mrs. Charles L.	156 Fifth Ave.
Thompson, Holland	17 Lexington Ave.
Thompson, Philips B.	43 Exchange Place.
Thorley, Charles	562 Fifth Ave.
Thorner, Edwin	West Islip, L. I.
Titus, Arthur H.	National City Bank, 55 Wall St.
Tobin, R. M.	Hibernia Bank, San Francisco, Cal.
Todd, Ambrose G.	51 East 58th St.
Todd, Edwin S.	Miami Univ., Oxford, Ohio.
Tokieda, M.	55 Wall St.
Tomlinson, John C.	35 Wall St.
Townsend, James M.	7 Nassau St.
Townsend, S. DeLancey	424 West End Ave.
Trull, William C.	20 Fifth Ave.
Truman, Henry H.	56 Highland Ave., Orange, N. J.
Tuckerman, Alfred	University Club.
Turnbull, Arthur	38 Wall St.
Turner, William L.	84 Cotton Exchange Bldg.
Turnure, George E.	64 Wall St.
Turrell, Edgar A.	76 William St.
Twitchell, H. K.	270 Broadway.
Tyler, William S.	30 Church St.
Ullman, Joseph	160 Broadway.
Underhill, Francis Jay	2131 Broadway.

# LIST OF MEMBERS

523

Urban, George, jr.	Pine Ridge, Buffalo, N. Y.
Van Beuren, F. T.	21 West 14th St.
Van Beuren, Michael M.	7 Wall St.
Van Cortlandt, R. B.	30 Pine St.
Vanden Berg, Y.	32 Nassau St.
Vanderlip, Frank A.	55 Wall St.
Van Wagenen, Bleecker	443 4th Ave.
Ver Planck, William Gordon	149 Broadway.
Vezin, Charles	409 Palisade Ave., Yonkers, N. Y.
Victor, Royall	65 W. 45th St.
Villard, Mrs. Henry	145 West 58th St.
Voorhees, Stephen H.	68 William St.
Wacker, Charles H.	206 La Salle St., Chicago, Ill.
Wade, G. K. B.	155 East 72nd St.
Wade, Robert Buchanan	43 Exchange Place.
Wade, William O.	21 West 101st St.
Wait, Frederick S.	141 Broadway.
Wallace, James N.	54 Wall St.
Wallace, William H.	66 Broadway.
Walter, W. J.	52 Broadway.
Warburg, Felix M.	52 William St.
Warburg, Paul M.	52 William St.
Ward, Owen	208 Fifth Ave.
Wardrop, Robert	Peoples Nat. Bank, Pittsburg, Pa.
Wardwell, Allen	15 Broad St.
Warfield, F. P.	2 Rector St.
Warren, Lloyd	3 East 33rd St.
Waterbury, John I.	113 Broadway.
Watson, C. W.	500 Madison Ave.
Webb, George T.	Ellendale, N. Dak.
Weber, A. F.	464 Elm St., Richmond Hill, L. I.
Weeks, W. Holden	128 Broadway.
Weil, Edward A.	70 Gold St.
Weinstein, Edward M.	Public Bank, N. Y.
Weitling, William W.	College Point, N. Y.
Welch, S. C.	Waynesville, N. C.
Welling, Richard	2 Wall St.
Wellington, W. L.	50 West 45th St.
Westcott, Clarence L.	100 Broadway.
Westinghouse, George	Pittsburg, Pa.
Wheat, Alfred A.	32 Nassau St.
Wheeler, Everett P.	735 Park Ave.
Whitaker, Edward G.	45 Broadway.
White, Andrew D.	Syracuse, N. Y.
White, Horace	18 West 69th St.
Whitin, E. Stagg	Columbia University.
Whitman, Malcolm D.	115 East 60th St.
Whitridge, F. W.	59 Wall St.
Wiborg, F. B.	Ault & Wiborg Co., Cincinnati, O.

- Wickes, Edward A.  
 Wilds, Howard Payson  
 Wilkes, Grace  
 Wilkinson, W. C.  
 Willard, Eugene S.  
 Willcox, W. F.  
 Willcox, W. R.  
 Willett, George F.  
 Williams, Clark  
 Williams, Henry D.  
 Williams, Richard H.  
 Williams, T. E.  
 Williams, Timothy S.  
 Williams, Stephen G.  
 Williams, Waldron  
 Wilson, George T.  
 Wilson, Henry F., jr.  
 Wilson, James Harrison  
 Wilson, Warren H.  
 Wing, Daniel G.  
 Wing, Thomas E.  
 Winthrop, Bronson  
 Witherbee, F. S.  
 Witizman, John R.  
 Woerishoffer, Carola  
 Wolff, Emil  
 Wolff, Mrs. Lewis S.  
 Wood, Mrs. Joseph S.  
 Wood, Willis D.  
 Woodin, C. R.  
 Woodin, W. H.  
 Woods, William W.  
 Woodward, S. W.  
 Woolley, Edwin C.  
 Woolman, Mrs. Mary Schenck  
 Worden, Charles H.  
 Wright, Edward A.  
 Wright, George M.  
 Wright, H. J.  
 Wright, Mrs. James A.  
 Wyckoff, William F.  
 Zachry, J. Greer  
 Zimmerman, Miss R. E.
- 15 Broad St.  
 University Club.  
 16 Washington Square.  
 Charlotte, N. C.  
 45 Pine St.  
 Coll. of Arts & Sciences, Ithaca, N. Y.  
 165 Broadway.  
 248 Summer St., Boston, Mass.  
 293 Madison Ave.  
 141 West 122nd St.  
 1 Broadway.  
 Aurora, Neb.  
 Huntington, L. I.  
 30 Broad St.  
 220 Eleventh Ave.  
 120 Broadway.  
 7 Wall St.  
 1305 Rodney St., Wilmington, Del.  
 283 Highland Blvd., Brooklyn, N. Y.  
 First National Bank, Boston, Mass.  
 37 Wall St.  
 23 East 33rd St.  
 4 Fifth Ave.  
 Battle Creek, Neb.  
 26 Jones St.  
 171 West 71st St.  
 12 East 70th St.  
 135 S. 2nd Ave., Mt. Vernon, N. Y.  
 7 Wall St.  
 40 East 64th St.  
 165 Broadway.  
 318 Normandie Ave., Los Angeles, Cal.  
 2015 Wyoming Ave., Washington, D.C.  
 6625 Mendota Court, Madison, Wis.  
 21 West 101st St.  
 Ft. Wayne, Ind.  
 149 Broadway.  
 280 Broadway.  
 7 Dey St.  
 133 West 11th St.  
 215 Montague St., Brooklyn, N. Y.  
 68 East 83rd St.  
 358 Fifth Ave.



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Newark, N. J.  
The Rookery, Chicago, Ill.  
Pullman, Washington.  
Wellesley, Mass.



## WHAT IS CRIME?<sup>1</sup>

WILLIAM M. IVINS

New York City

**I**F we are ever to get beyond misleading superficialities, beyond some very sturdy superstitions supported by all the sustaining power of profound ignorance, if we are ever to get beyond the belief of every man that he is competent to pass upon all the great problems which fall within the sphere and methods of government, we shall be compelled to approach the problem of crime through a discussion of the relations of the individual and the state.

Socrates said, "If you were in need of a dinner would you apply to a shoemaker?—No, but to a cook. Again, if you were bestormed and wished to make for a harbor would you resort to the soldiers on board?—Not so, but to the pilot." But in all matters of government,—and they are among the most difficult matters in the world—mankind seems to have forgotten this sensible and simple principle. The causes of this forgetfulness are not far to seek, but the main cause I believe is a form of education which teaches the citizen nothing thoroughly, but leaves every man nevertheless with the thorough belief in his own intellectual capacity in respect to whatever concerns society, and particularly in respect to such supposedly simple matters as crime and its treatment.

We start with the fundamental fact that crime is the point of conflict between the individual and society. The war is perennial and grows more intense with the complexity of social relations and of human nature.

The test of the efficiency of any society and any form of government is its capacity to deal with crime, *i. e.*, its power itself to survive and to contribute to the preservation for man-

<sup>1</sup> Read at the Conference on the Reform of the Criminal Law and Procedure, May 13, 1911.

kind of the social principle—for, notwithstanding Aristotle and those who have been repeating him for thousands of years, man is not a social animal but merely a gregarious one, and the perfectly social man is still in the making. As compared with this fact, which is the very reason for the particular social fact we call the state, all other facts of government are secondary, and almost negligible, and as I have said, we meet it most directly where the will of the state and the will of the individual are in conflict, *i. e.*, in the instance of the effort to prove and punish crime. And yet we have no more adequate definition of crime than that of Wharton, *vis.*, "Crime is an act made punishable by law," which is no definition at all.

But crime is in fact something more than this, and it is also something less, and until we shall have acquired a clearer social appraisement of the value and use of the words "a crime" and "a criminal" our difficulties will continually increase. It is hard to say whether we may best approach the question through the abstract idea of crime or the concrete fact of the criminal. One thing at any rate is certain, we have so far failed of progress in our effort to defend society against crime, and the whole tendency now is to defend it against the criminal. But criminality is a temperament, a state of mind, which, for the purposes of the law, is evidenced by an overt and provable fact—with this result, that we have the congenital or temperamental criminal, who is also an offender against universal ethical standards, and the occasional offender, who violates a particular decree of the legislature, which has no necessary relation to any ethical standards. These two have, as citizens, nothing in common, and their classification for treatment in a single class or group leads to the most profound miscarriage of law and to the most shameful demonstration of the ignorance of the people as to the relation, and the importance of the relation, of the individual to the state. And so, as I have said, I conceive that any discussion of this most profound of all problems of statecraft must begin with the discussion of the state and its functions.

A little over a hundred years ago all the currents of individualism joined in the French Revolution, and since then this great common current has become stronger throughout all

Christendom. Speaking generally, it was always, prior to that time, theoretically taught that the rights of society were superior to those of the individual. Since then the belief has become general that the rights of the individual are in some respects superior to those of society. There are today not only thousands, but hundreds of thousands, and possibly some millions of men who would rather sacrifice society itself than sacrifice any unit of it, on the theory that it is better for mankind that any number of guilty men should escape than that one innocent one should be punished. This theory involves in practise the danger that all mankind may be punished rather than any man be unjustly punished, and resolves our courts into tribunals for the protection rather than the proof of crime.

The struggle for law is a struggle between the will of "the one," the offender, and the will of "the all," the state; and this struggle in its final analysis finds itself epitomized in the effort of the state to enforce the criminal law. ¶ To the minds of most men of our own times it seems to be a mere truism that there is a higher law to which the state must be subject, notwithstanding the fact that it is impossible to predicate the state itself without the denial of this higher law or without admitting that this higher law is undiscoverable, although from time to time it takes form in the fact of revolution—that is to say, in the bald principle of might. Thus we are involved in the eternal paradox of right and might, in what Nietzsche would call the political "eternal return."

The problem of government was never better stated than by Rousseau in this passage, which has become classic:

The fundamental problem is to find a form of association which shall protect and defend at once the person and the property of every member with the whole common force, and in which each individual, inasmuch as he attaches himself to this association, obeys only himself and remains as free as before.<sup>1</sup>

It is at once apparent that this statement of the problem is also a demonstration of its hopeless insolubility. Rousseau was also

<sup>1</sup> *Social Contract*, ch. I, iv.

the author of the great paradox which is supremely puzzling when we come to consider the nature and the function of law, *viz.*, that "law itself must be created by the social spirit which it itself aims at creating." Bentham, who has so inexplicably filled the modern English and American mind with his theories, which are not contributions to knowledge but a mere payment in words, "understood nothing in law but the character of a command, and could see no positive relation of it to human nature beyond the degree in which it dispenses with the pain of restraint while increasing the pleasure of liberty." This is only another aspect of the same paradox.

When in his turn Spencer came to consider the same problem he pointed out that it was ridiculous to think of a people as creating rights which it had before, by the process of creating a government in order to create them. It is absurd to treat an individual as having a share of rights *qua* member of the people, while in his private capacity he has no rights at all. In commenting on this, Mr. Bernard Bosanquet, to whom I shall refer again, says:

If individual claims, apart from social adjustment, are arbitrary, yet social recognitions, apart from individual qualities and relations, are meaningless. As long as the self and the law are alien and hostile, it is hopeless to do more than choose at random in which of the two we are to locate the essence of right.<sup>1</sup> . . . But when all this is said, it must not be supposed that penal law has been reduced to the level of a strong and definite collective sentiment, or a crime to the level of an annoyance. The simplest penal law of a self-existent social group is different from the anger of a crowd or mob. There is in it some sense of permanence, and permanence means responsibility and generality—a distinction of right and wrong. The fact of formally constituting a crime, *i. e.*, of announcing a law, implies that mere distaste is no ground of punishment. The law means that there is something worth maintaining, and that this is recognized, and that to violate this recognition is not merely to be unpopular, but to sin against the common good, and to break an obligation. With less than this there is no true crime. . . . So with the relation between a strong collective sentiment and a true law. A strong sentiment, as such, is a mere fact, a mere

<sup>1</sup> *Philosophical Theory of the State*, p. 71.



force ; and as such the sociologist regards it. A law involves the pretension to will what is just, and is therefore a sentiment and something more, *viz.*, the point of view of social good. . . . The ideal aspect of law as recognition of right is no less actual, no less solid and verifiable, than the facts of sentiment or necessity which may have suggested and sustained it.<sup>1</sup>

In his little book on Liberty, Mill dwells on the development in greater and greater degree of the feeling on the part of the people that all problems would be solved by making the ruling power emanate from the periodical choice of the ruled.

Some persons began to think that too much importance had been attached to the limitation of the power itself. *That*, it might seem, was a resource against rulers whose interests were habitually opposed to those of the people. What was now wanted was, that the rulers should be identified with the people ; that their interest and will should be the interest and will of the nation. The nation did not need to be protected against its own will. There was no fear of its tyrannizing over itself.<sup>2</sup>

This was Rousseau's fallacy, and it has now become the triumphant fallacy of a democracy suffering from the malignant combination of inadequate education on the one hand with the ineradicable belief in the intelligent consciousness and omniscience of the people on the other.

But Mill saw in a measure the fallacy of Rousseau, while those who have come after him have not followed him in the recognition of this fallacy. Mill saw that with the success of the democratic principle

elective and responsible government became subject to the observations and criticisms which wait upon a great existing fact. It was now observed that such phrases as "self-government" and "the power of the people over themselves" do not express the true statement of the case. The "people" who exercise the power are not always the same people with those over whom it is exercised ; and the "self-government" spoken of is not the government of each by himself but of each by all the

<sup>1</sup> *Op. cit.*, pp. 38, 39.

<sup>2</sup> *On Liberty*, by John Stuart Mill. People's ed., p. 2.

rest. The will of the people, moreover, practically means the will of the most numerous or the most active *part* of the people: the majority, or those who succeed in making themselves accepted as the majority . . . and precautions are as much needed against this as against any other abuse of power. The limitation, therefore, of the power of government over individuals loses none of its importance when the holders of power are regularly accountable to the community, that is, to the strongest party therein. . . . In political speculations "the tyranny of the majority" is now generally included among the evils against which society requires to be on its guard.<sup>1</sup>

Commenting on the foregoing passage from Mill, Mr. Bosanquet says:

The paradox of self-government, then, so far from being theoretically solved by the development of political institutions to their highest known maturity, is simply intensified by this development. When the arbitrary and irrational powers of classes or of individuals have been swept away, we are left face to face, it would seem, with the coercion of some by others as a necessity in the nature of things. And, indeed, however perfectly "self-government" has been substituted for despotism, it is flying in the face of experience to suggest that the average individual self, as he exists in you or me, is *ipso facto* satisfied, and at home, in all the acts of the public power which is supposed to represent him. If he were so, the paradox of self-government would be resolved by the annihilation of one of its factors. The self would remain, but "government" would be superfluous, or else "government" would be everything, and the self annihilated. . . . Government, in fact and in principle, reveals itself as coercion exercised by "the others" over "the one." And so long as this is the case, and as the government is alien to the self, not only do the rights of majorities remain without explanation, but no less is it impossible to say on what rational ground an entire community can apply coercion to a single recalcitrant member.<sup>2</sup>

Such is the *impasse* in which we find ourselves. Government is in fact coercion of "the one" by "the others" and both "the others" and "the one" claim the prerogative of determining standards of right and wrong. In a thousand matters they agree, and that in which they so agree has come to be the

<sup>1</sup> *Op. cit.*, pp. 2, 3.

<sup>2</sup> *Op. cit.*, pp. 75, 76.

universally recognized code of ethics. There is, of course, always the man who is outside the law—the outlaw in the literal sense of the word. He stands not only beyond the law but beyond ethics, and sets his will deliberately against the will of the community. This man is the distinct individualist, is in principle the anarchist, is typically the anti-social man and is universally recognized to be the criminal. His existence is a psychological rather than a sociological fact, and however variable the notions of crime may have been in time and place throughout history, violations of the right of life, the right of property and the rights of the person have finally come to be universally recognized criminal categories.

Practically all of the crimes in our statute books or at common law may be classified under one or the other of these titles, the sub-class or species in each case being determinable by the answer which is given to the questions, "How?" "Why?" "When?" *i. e.*, each of these three great classes may be subdivided according to the categorical classification of the logicians from Aristotle through Porphyry and St. Thomas to Jevons, Boyce-Gibson and Joseph in our own time.

Each of these three great categories grows out of the fact that a given act originally was a crime against the community because it was primarily a crime against the individual, and it therefore assumed the aspect not only of crime but of tort. In ancient law the tortious aspect was the primary one, the criminal aspect the secondary one, and it was only late in the development of legal history that the state took to itself the enforcement of the law on its criminal side and disentangled it from its civil aspect.

As this development has proceeded, the right of the individual to cure a crime against himself has entirely disappeared from our land and only reappears from time to time in our practice as a vestige and survival, such as we find cropping out in the occasional application of the lynch law, or in the application by a jury of the doctrine of the "unwritten law," where an outraged father or husband or wife takes the law into his or her own hands.

And so the state has come to be the only agent recognized

by law for the punishment of crime, but concomitant with the development of this fact has been this other, *viz.*, the creation of a new category of crime, *i. e.*, the punibility of acts which are not addressed necessarily against the individual either in respect to his life, his liberty, his person or his property, but are regarded as injurious to the state as such, without reference to any one of its individual members. The earliest form of the expression of this category of crime was that of treason or sedition, but even then in its origin it was treason or sedition against the sovereign, *i. e.*, against an individual and not against a people.

This new or fourth category has opened the field for tremendous legislative activity. The legislature is enabled to erect into a crime or to class as crime that which, in itself, implies no violation of any ethical rule, unless it be unethical to do whatever a majority of the members of the legislature (no matter who they are or how they are chosen or by what interests governed) may determine to be criminal and therefore unethical. In such a view our legislators are to be regarded not only as the makers of our law in the sense in which Solon was, but as the givers of our commandments in the sense in which Moses was.

No less sober and serious a man, a man of no less intellectual poise and serenity than the President of the United States, seeing the dangers into which the country is drifting, has already talked to us upon one occasion or another of the bankruptcy of the criminal law. We are daily being asked to answer the question, what is a criminal? We are confronted with problems in the form of legislation, criminology and penology. We have distinct schools, some proceeding on the theory of retribution, some on that of punishment, some on that of prevention, some on that of reform, and some even on the theory that the criminal is the creature of society and as such the ward of society,—in a word, that the criminal is not the enemy of the state, is not the one against the many, but is the abnormal man, the man morally sick. All this discussion goes on generally without any consideration whatever as to what constitutes crime, except that it is the act of a criminal, and that a criminal is a person who commits a crime.

Let us begin over by attacking the question not as a problem in right and wrong or as a fact arising from the relation of the individual and the state, but from the point of view of the criminal man, of whom we have numberless illustrations although no adequate definition, so that we are compelled to resort to analysis and description in order to give some kind of working exactness to our notion.

Let me give you these pictures of the criminal as he has been described by the greatest authorities—men who have studied him in the prisons and in his intimate daily life—patiently, thoroughly, scientifically; not in passing, as our judges do, but through daily and hourly intercourse with him, as a physician with his patient.

The two most characteristic features in the intelligence of the average criminal are at first sight inconsistent. On the one hand he is stupid, inexact, lacking in forethought, astoundingly imprudent. On the other hand he is cunning, hypocritical, delighting in falsehood, even for its own sake, abounding in ruses. These characteristics are fully illustrated in the numerous anecdotal books which have been written concerning crime and criminals.<sup>1</sup>

There are lacunae in their mental organization which may be compared with the loss of a member or of a physical function.<sup>2</sup>

Garofalo, with his long experience as the presiding judge of a criminal tribunal, and with his intimate acquaintance with the whole scientific literature of the subject, dwells in his summary of the criminal character upon the untruthfulness, or better still, the incapacity for truth among criminals as a marked characteristic, due to their want of mental sobriety, to their frivolity and to their careless and incoherent methods of thought. He says that this want of sobriety or frivolity "at the same time explains the tendency of criminals in general, and of thieves in particular, to lie gratuitously, without any purpose, almost un-

<sup>1</sup> Ellis, *The Criminal*, p. 133.

<sup>2</sup> Garofalo, *La Criminologie*, p. 68, quoting Ribot, in *Revue Politique et Littéraire*, no. 25, Dec. 19, 1885.



consciously, and the habitual inaccuracy which proves a lack of precision, both in their perception and in their memory."<sup>1</sup>

There is no single characteristic of the criminal which Lombroso, Marro, Ferri and the others dwell upon more than the uniform and universal absence of the sense of truth, the complete and total lack of truthfulness in dealing with other beings—with parents, with superiors and accomplices. It is generally recognized that this characteristic of untruthfulness among prisoners is the source of many of the outbreaks in prison. Certainly it is absurd to suppose that a man who has been unable to resist the temptation to kill, to steal, to commit sodomy, can resist the temptation to lie, that he may commit every other known crime and still be capable of truth.

The incapacity for remorse and repentance, with vanity and exaggerated self-love, are universally recognized criminal characteristics. Another characteristic is the likeness of criminals, in most respects, to great overgrown children. One of the results of this latter fact is the universality of two criminal traits wholly childish in their nature, *viz.*, the almost complete impossibility of repressing a desire, and the facility of lying.

Another peculiarity of criminals, well marked and generally recognized, is the fact that they are less sensitive to pain than the average man. A long series of experiments conducted in leading prisons shows conclusively that sensibility to pain is less among the criminal class than among any others, and this very fact on the one hand renders their discipline more difficult, and on the other hand calls for a larger measure of force, when corporal punishment is applied, than would be necessary in the case of the average man.<sup>2</sup>

"Thus Lombroso found that sensibility to pain was only 34.1 in the case of criminals as against 49.1 in the case of normal men." At the Chatham Penitentiary in 1871-2 there were 841 cases in which inmates voluntarily cut or wounded themselves. Twenty-seven men deliberately broke a limb, in seventeen of which cases amputation was necessary. Sixty-two attempted to

<sup>1</sup> *Op. cit.*, pp. 87, 88.

<sup>2</sup> *Ibid.*, p. 100.



mutilate themselves and one hundred and one made wounds with corrosive substances.<sup>1</sup>

Between intelligence and pain there is so strict and close relation that the most intelligent beings are those who are capable of suffering the most, and the least intelligent almost invariably those who suffer the least. "The same application of physical force, or the same deprivation of comforts, which would result in pain sufficient to be a deterrent or a corrective for the more intelligent and sensitive, fails wholly, and calls for a much larger measure of punishment for the less intelligent. A punishment which might seem severe, and possibly criminal, if applied to a child or a delicate girl may when applied to a criminal partake no more of cruelty, so far as the pain it involves, than do the blows exchanged by healthy athletes."

Lombroso says:

It is not that criminals generally are lacking in a standard or in recognition of the right, or in legal knowledge; it is rather because they lack the force or power of will to conform to the standard. \* \* \* In order that their knowledge may be transformed into a well-defined will, as food is transformed into chyle or into blood, a new factor, feeling, is necessary, which is habitually lacking among criminals.<sup>2</sup>

The criminal everywhere is incapable of prolonged and sustained exertion.

He is essentially idle; the whole art of crime lies in the endeavor to avoid the necessity of labor. This constitutional laziness is, therefore, one of the chief organic bases of crime. Make idleness impossible, and you have done much to make the criminal impossible. It is not without reason that French criminals call themselves *pegres* (from *pigritia*)—the idle. Lemaire, a notorious French criminal of the beginning of the century, was speaking for all his class when he said to his judges: "I have always been lazy; it is a shame, I admit, but I am not adapted for work; to work one needs an effort, and I am incapable of it; I only have energy for evil; if one must work I do not care about life; I would rather be condemned to death."<sup>3</sup>

<sup>1</sup> *Rivista delle discipline carcerarie*, 1873, p. 369, noted in Lombroso, *L'Homme Criminel*, p. 291.

<sup>2</sup> *Ibid.*, p. 407.

<sup>3</sup> Ellis, *op. cit.*, pp. 167, 168.

It is now agreed that the criminal, if there is anything in comparative psychology, is to be subjected to the same treatment which is found best among children. Speaking of this, Ellis says :

It is a very significant fact that these characters are but an exaggeration of the characters which in a less degree mark nearly all children. The child is naturally, by his organization, nearer to the animal, to the savage, to the criminal, than the adult. Although this has frequently been noted in a fragmentary manner, it is only of recent years that the study of childhood, a subject of the gravest importance, has been seriously taken up by Perez and others. The child lives in the present ; the emotion or the desire of the moment is large enough to blot out for him the whole world ; he has no foresight, and is the easier given up to his instincts and passions ; our passions, as Hobbes said, "bring us near to children." Children are naturally egoists ; they will commit all enormities, sometimes, to enlarge their egoistic satisfaction. \* \* \* In the criminal, we may often take it, there is an arrest of development. The criminal is an individual who, to some extent, remains a child his life long—a child of larger growth and with greater capacity for evil. This is part of the atavism of criminals.<sup>1</sup>

Du Camp says :

It is not necessary to belong to a line of evil-doers in order to be born with criminal instincts. There are children with defective brains, whom vice takes possession of from their earliest years. Neither the example of probity, nor reproaches, nor encouragements to well-doing, nor punishments, can accomplish anything with these beings who have only an inferior moral sense. They are born thus ; they cannot be remade. They have within their organism a nameless something which naturally leads them to crime, and which is, in fact, so to speak, the essence of their existence. I have met them in prisons ; I have talked with them, and the notion of good and evil seems to escape their sense. Religion, morals, philosophy, justice—everything, in a word, which constitutes civilization—has slipped over them without penetrating ; they have remained the primitive man—the man of the stone age, who steals, kills, gets drunk, because he is as yet only an animal. They respect nothing. They fear nothing but force, of which they stand in dread because it sometimes masters them and protects others against

<sup>1</sup> *Op. cit.*, pp. 258-260.

them. The fundamental characteristic of these human beasts is idleness and alcoholism. To them the ideal existence is a permanent orgy—always to lie down and always to drink. What a dream!<sup>1</sup>

And these are the subjects we are to try to save. What a task! What a duty! A task and a duty in which, so far, mankind has failed, but in which, by universal agreement, the Elmira system is nearest to success.

Nothing is better proved than the moral insensibility of the instinctive criminal, and this in its turn is believed by many to be related to his physical insensibility and his equally morbid or atypical character.

The moral insensibility of the instinctive and habitual criminal, his lack of forethought, his absence of remorse, his cheerfulness, have been noted long before they were exhaustively studied by Despine. In the *argot* of French criminals, conscience is *la muette*, and to induce any one to lead a dishonest life is *l'affranchir*.<sup>2</sup>

But the roots of criminality are not only deeper than professionalism, they are deeper also than any merely acquired disease. I have frequently had occasion to note the remarkable resemblances between criminals and idiots. There is the same tendency to anatomical abnormalities of the muscles, arteries, bones, *etc.*; in both the muscular system is weak; there is the same tendency also to small and weak hearts, with valvular defects. There is, again, the same sensory obtuseness, with the same exception in the case of sight, which is remarkably good, with rarity, it seems, of color blindness. \* \* \* Cranial asymmetry is common in idiots as well as among criminals; and while meningitis is a common cause of idiocy, such evidence as we possess shows that it is also common in criminals. Tubercular disease is again common in both. Epilepsy, to which so much importance has of late been attached in connection with criminality, is notoriously common among idiots, being found among nearly twenty-five per cent. \* \* \* The criminal is, however, by no means an idiot. He is not even a merely weak-minded person. The idiot and the feeble-minded, as we know them in asylums, rarely have any criminal or dangerous instincts. \* \* \* The condition in question, by whatever name it is

<sup>1</sup> *Revue des Deux Mondes*, April 15, 1887, p. 847.

<sup>2</sup> Ellis, *op. cit.*, p. 124.

called, is described by alienists as an incapacity to feel, or to act in accordance with, the moral conditions of social life. Such persons, it has been said, are morally blind; the psychic retina has become anaesthetic. The egoistic impulses have become supreme; the moral imbecile is indifferent to the misfortunes of others, and to the opinions of others; with cold logic he calmly goes on his way, satisfying his personal interests and treading underfoot the rights of others. If he comes in contact with the law, then his indifference changes into hate, revenge, ferocity, and he is persuaded that he is in the right.<sup>1</sup>

Garofalo sums up the abnormal characteristics of the criminal as follows:

There is a class of criminals who are physical anomalies, and very frequently anatomical anomalies, which are not pathologic, but having a degenerative or retrogressive character which is sometimes atypic, and many of the features of which prove an arrest of moral development, although their faculty of ideation may be normal, who have certain instincts and certain appetites comparable with those of savages and children, and who finally are lacking altogether in altruistic sentiment, and consequently act solely under the empire of their own desires. It is these who commit murder from purely selfish motives, without any influences from prejudices and without any indirect complicity of a social environment. Their anomaly being absolutely congenital, society has no duty toward them; its only duty toward them is that of suppressing beings whom no bond of sympathy can attach to it, and who, being moved solely by egoism and incapable of adaptation, represent a continuous danger to the members of the association.

Tallack, one of the greatest English authorities, gives this summary, and quotes Mrs. Lynn Linton, than whom no gentler spirit ever lived:

They seem to be "past feeling" as to the moral sense. Exhortations, persuasion, threats, kindness, severity,—each and all—seem to have little or no effect upon them. They are almost entirely out of the reach of either ordinary or special influences. And hence, for the safety of the public, there seems to be only one effectual way of dealing with them, namely, to place them under very long restraint, not so much with a hope of altering their condition as of simply keeping them

<sup>1</sup> Ellis, *op. cit.*, pp. 228, 229, 230.

out of the way of inflicting grave injuries upon the community. They are, in fact, an abnormal class, and must be dealt with accordingly.

Mrs. Linton remarks of such miserable beings:

Every warder and governor of a jail has had experience of the intractable prisoner—the man or woman whom no reasoning can convince, no kindness can sway, and with whom even self-interest is inoperative. It is a creature with the speech and form of humanity, but with the fierce instincts of a wild beast—the malevolent passions of a demon. Were it not overmastered and controlled it would commit murder with no more moral consciousness of the heinousness of its crime than a boa-constrictor has when it swallows a rabbit, or than a tiger feels when it strikes down an antelope. Yet the creature is not intellectually mad. Crafty and clever, it sets the authorities at defiance, and bamboozles the chaplain, the magistrates, the police. Indocile, treacherous, stony-hearted, lying, this creature is not yet mad. “Mad doctors” come from London and examine and report: “Not a trace of intellectual insanity; a case of pure perversion; physical condition sound,” and so on. And yet, *pace* the experts, the creature and all its like are mad morally, if not intellectually.

Such persons positively enjoy a subtle and protracted antagonism to officers of the law.

And so Ellis, as the result of the work of the modern scientific school, gives us this definition of criminality:

Criminality, therefore, cannot be attributed indiscriminately even to the lowest of races. It consists in a failure to live up to the standard recognized as binding by the community. The criminal is an individual whose organization makes it difficult or impossible for him to live in accordance with this standard and easy to risk the penalties of acting anti-socially. By some accident of development, by some defect of heredity or birth or training, he belongs as it were to a lower and older social state than that in which he is actually living. It thus happens that our own criminals frequently resemble in physical and psychical characters the normal individuals of a lower race. This is that “atavism” which has been so frequently observed in criminals and so much discussed. It is the necessarily anti-social instinct of this lowlier-organized individual which constitutes the crime.<sup>1</sup>

<sup>1</sup> *Op. cit.*, pp. 206, 207.



The result, as Topinard shows, is that

criminals constitute a special professional category in society, in the same way as men of letters, men of science, artists, priests, the laboring classes, *etc.*, but a complex category in which the most diverse elements enter: the insane or those predisposed to insanity, epileptics and those predisposed to epilepsy, the alcoholic, the microcephalic, the macrocephalic, those predisposed by some vice of organization or development anterior or posterior to birth, betraying itself sometimes by very evident anatomical anomalies, those who are predisposed by family traditions and inclinations, those whose moral instincts are perverted by individual education and social environment, and finally, those who are criminals by accident, without preparation or predisposition.

^ Criminality, in most cases, is even more than a trade. It is a vocation. Men are born to it. Their aptitude for it is cultivated in youth. It is developed like the germs of a hereditary disease, and the more it is developed the more certainly incurable it becomes. ^

Du Camp, than whom no one can speak with better claim to attention, thus distinguishes the professional from the accidental criminal, and shows the difficulties of treatment and the limits of possibility of genuine reform:

Before, during, after imprisonment, no influence succeeds in penetrating these criminals who seem to be born to crime. Free, they look for a good opportunity. In detention their thought is one of vengeance upon those who have punished them. Released, they return to their criminal life as a jackal returns to its vomit. \* \* \* \* The class of delinquents upon whom it is possible to exercise beneficial action is that of those who have not hesitated to compromise their conscience, and who have committed a fault which has been found out before they had time to make it good. This is a very large class worthy of interest and which it is easy to restore to an honest life, if penitentiary demoralization has not yet perverted them. \* \* \* \* It is easy to assist them, because they assist themselves. To save them it is often enough to reach out a hand, as to a man who has fallen in the water, but who knows how to swim.<sup>1</sup>

<sup>1</sup> *Revue des Deux Mondes*, Apr. 15, 1887, pp. 847, 849.



Having studied the character of the criminal and the psychological foundations of criminality, let us now turn to conditions of our penal legislation. We have in these United States at the present time forty-seven, and shall soon have forty-nine, jurisdictions. Each of these jurisdictions has the power to declare certain acts to be criminal. Does this declaration of itself constitute criminality on the part of him who commits the act?

From the beginnings of society crime has been allied in use with terms like vice, sin, immorality, blasphemy. In certain countries and at certain times all blasphemy was crime; in other countries and at other times some vices and some sins were crimes; but in no country and at no time has every vice or every sin been a crime. At certain times and in certain countries crime and sin were nearly synonymous, but today these words have distinct meanings, and while the same act may be vice, sin and crime, it is crime solely because the legislature so decrees, and acts not commonly regarded as sinful may be made criminal by the same authority. The words have taken on different complexions and have assumed different definitions.

No one is more perfectly aware than I that for general purposes definition is negligible. It becomes of importance only for specific purposes and in reference to particular facts, but it so happens that every crime is a particular fact and that every enactment creating a crime is also a particular fact, and that the whole theory of the law with regard to the punishment of crime is a theory involving probative principles, and for probative purposes definitions are absolutely necessary.

Having said this, let us return for a moment to the fact of the forty-seven jurisdictions of which I have just spoken. Is it possible that we can have an efficient and intelligible criminal law under conditions where an act may be entirely innocent in either New Jersey or Connecticut and criminal in New York; that we can have an adequate criminal law where one state erects a sin such as adultery into a crime and all the surrounding states leave it with impunity in the ethical category and wholly outside the legal one? Is it possible that that which may be regarded as a crime against the community, *i. e.*, against

the state as such in one jurisdiction, is not to be regarded as a crime in another? Is it possible that one state can by law make of a highly social man an enemy of society by decreeing him into the criminal or anti-social class?

If there be anything which justifies every man in the belief that the law should be intelligible it is the fact that he is subject to punishment by the law, that he is responsible to the law for his acts, and above all, that he should know for what acts he is responsible to public opinion, for what acts he is responsible to his conscience, and for what acts he is responsible to the courts. He has a way of determining for himself what the tribunal of public opinion will say and of acting upon his willingness to accept or not to accept the verdict of that tribunal. His conscience is his self and as his self differs from every other self, so his conscience differs from every other conscience, and in the tribunal of conscience he determines what he may or may not do and live happily and in possession of his own soul, answering for himself the question: "What shall it profit a man if he gain the whole world and lose his own soul?"

As man and citizen he knows that certain things which fall within the class of vice, of sin, of wrong-doing, are criminal. Every man is to some extent and in some rudimentary way in favor of society as against the individual. He has learned this much in the course of that life which has made his personality what it is. It comes to him out of the past and will reach beyond him into the future. And this is the point at which, in respect to crime and vice and sin and wrong-doing, ethics and law converge. There are, to be sure, a few supremely anti-social individuals who assert the right to the superiority of their own will and deny the existence of any moral basis for any ethical order. These we leave out of consideration, for they are self-classed; but what is to be said of the man who sometimes deliberately sets his will against the will of the state, who recognizes it where it has been expressed by custom from time immemorial, but denies it where it is the work of parties and bosses and legislative mobs and journalistic hysteria?

We may characterize the criminal in many ways, but we still have to struggle for some definition of crime which is not purely

formal. And the first question is, how far the legislature, even assuming that it actually represents society—instead of often deliberately misrepresenting it—can assert the will of “the others” against the will of “the one” in such form as to make the failure of concordance between the two a criminal act and punishable even to the point of the destruction of the personality or the ruin of the social status of “the one.” It cannot be said of democracy that it is a failure. All that can be said of it is that it is not a success, that it is a form of government and only a form of government, and that it is less of a failure than some other forms of government, that with us it is inevitable, but in respect to its practical solutions of the relation between the individual and the state, so far as concerns the repression of crime, it is no less a failure than any other form of government, and I believe more of a failure than most other forms of government which are recognized as civilized. This I believe to be due to the inevitable fundamental principle of democracy, which is individualism, and of this other principle, *vis.*, that it regards legislation as an efficient force, as something more than general custom, utterly disregarding the fact that a statute is impotent until it is sanctioned by custom, and that after custom has grown to a point where it sanctions a given statute, the latter ultimately in turn develops into a social axiom calling for application only on the rarest occasion.

But the fault of a democracy is the prevalent belief in the possibility of salvation by legislation, and so we spread on our statute books annually from forty to fifty thousand statutes, and a very large proportion of these statutes are criminal laws, with the result that a man is a criminal in one state and not a criminal in another in respect to a large number of matters, and that practically all of these matters may be wholly lacking in the quality of what I may call natural criminality, as distinguished from criminality by legislation.

I believe it will ultimately be found that if our present constitutional system finally breaks down, its most disastrous break will be due to the fact that through legislation that which is criminal in one part of the country is not criminal in another; that that which is criminal on the right bank of a river is not

criminal on its left bank; that that which is punishable somewhere is punishable nowhere else; and that that which ought to be punishable everywhere may, after all, be punishable nowhere.

We must eventually find a definition for crime, we must eventually find a definition for criminal other than the useless formal definition which is a mere tautology, and it must be the law eventually that criminality shall be identical through the entire nation. It may be true that we shall have different ethical standards in different parts of the country dependent upon the character of the community, its progress and civilization, whether it be an agricultural community, an industrial community or a financial community, or what not, but one thing is certain—we must have but one standard of criminality, and to attain that we must have a definition of crime and a means for determining whether a man is or is not a criminal. Bosanquet reminds us that

for the pure sociologist an act is a crime when it offends the strong and definite collective sentiments of society. This is the strictly causal view of the matter. The act is a crime because it offends; it does not offend because it is a crime. And the corollaries are valuable. It is idle to distinguish, on such a basis, between the reformatory, the retributive, and the deterrent views of the reaction which is punishment. An offensive act is in itself at once an exhibition of character, an injury, and a menace.<sup>1</sup>

Here in this passage we find, possibly, the kernel of that which may afford us the solution. In the first place, crime is an act, it is a fact. Socially it is a thing. It is an offensive act. It is offensive not because it has been declared to be so in spite of the consensus of society, but because the consensus of society makes it so. But in addition to this, so far as the individual is concerned it is a demonstration of character. So far as the present of society is concerned it is an injury. So far as the future of society is concerned it is a menace.

It does not fall to me to discuss its character as an injury or

<sup>1</sup>*Op. cit.*, p. 37, footnote.

as a menace, or its treatment as either of these, but it does fall within my province to discuss it as an exhibition of character.

The ordinary definitions of crime are perfectly futile. Our language is full of words, some of which are names that are really names and others which are names that are only noises. Sometimes the same word may be a name and at other times it may be a noise. There are times when murder is a name and times when it is a noise; times when witchcraft was a name because it was punishable, and now it is merely a noise so far as the law is concerned because it is known to be non-existent. So the generic word crime is generally a noise and it becomes a name only when it is attached to a particular act. The plural, crimes, has come to be merely the noisiest of noises, adopted for all uses, by all persons, at all times, in all walks of life as applicable to the doings or the thinkings of those who differ radically with the person who happens to be making the noise. The difficulty arises when these noises are sought to be enacted into laws, and this is particularly true when the world has become a general debating society and men and women are continually walking about to see whom they may convince, or, failing that, condemn, and there is no single word which lends itself more particularly to an artificial and precarious simplicity than the word crime, and this, combined with the readiness to believe that rules are better instead of worse for being concise and apparently simple, is one of the sources of our legislative difficulties.

I do not think it going too far to say that in nine-tenths of our characterizations of acts as criminal we are surreptitiously assuming the truth of what we are pretending to prove. Nothing can give us a better idea of the occasional, I may say general, futility of definition, even if the definition be correct, than this which I take from Bradley's *Principles of Logic* (p. 227): "A body is to the right of that which that which it is to the right of is to the right of." If you think a while you will see that this definition is absolutely correct. You will see also that it tends nowhere and that it serves no earthly purpose.

Now let us take the current definition of crime and the criminal, and lay it alongside the awful example which I have given



you. In the last edition of Wines' *Punishment and Reformation* it is stated, "The criminal is the concrete expression of the abstract idea of crime," and this definition is about as good as any that is to be found in the law books. But this is no definition whatever. Moreover, it errs because that may be a crime which is wrongful only because the legislature declares it to be so, and which may have been innocent yesterday, may be criminal today, and may become honest again tomorrow. It may be a crime although it violates no right of other men, but merely because the legislature declares it so, or it may be a crime, although it does no injury to society, but only violates the idea of the legislature with regard to what constitutes an injury to society.

I will not offer any illustration of the first and second of these assertions, because you will find them easily enough, but you may not be so apt to find an illustration of the last unless you are reminded of it, but that I can give you most readily, *viz.*, the fact that it was a crime for Mistress Ann Hutchinson to speak in public, and she was therefore driven out of Massachusetts and compelled to enter another community. But going further, for centuries and even during the identical time when it was a crime for Mistress Ann Hutchinson to speak in public, the practise of witchcraft was a crime, although there was no such thing as witchcraft, in spite of the declaration of the Scripture and the Court of King's Bench to the contrary.

So our legislature might declare it to be criminal to coin gold by necromancy, and if a jury believed that that fact was proved the crime would be established. We have an identical illustration of this at the present time in the tendency to legislate belief into law, in what one of the judges of the Supreme Court of the United States has described as not only desirable but possible, *i. e.*, to legislate that hereafter competition and not combination shall be the law of trade. It is easy to give us a formal definition of crime which all may accept, just as all may safely accept the definition of the man who is on the right side of another man, *viz.*, that whatever the legislature declares to be a crime, and particularly if it be accompanied by a penalty or a punishment, is a crime. Now the result of this



is to take criminality out of all human categories, to place it purely and simply in the category of legislative theory. One of the consequences which follows is the natural and necessary bankruptcy of the criminal law, the impossibility of establishing a science or an art of criminality which has any relation with our actual science or actual art of legislation, the making unintelligible of all theories of delictuosity, the mingling and confusing of all theories of punibility, the impossibility of criminal statistics, and finally, in all probability, after conditions have become utterly unbearable, the necessity for providing: first, that all criminal law shall be national law; and second, that the national law shall be the work of experts not only in history and psychology, but in sociology, and not a congressional mob run by committees run by individuals who are run by interests.

Whatever the ultimate definition of crime may be it will certainly be the great central point to which and from which the whole of subjective and adjective criminal law must radiate. It is the parameter of the relation of society to the individual. I have chosen to discuss not crime itself, nor even the answer to the question, "What is crime?" but just the question itself *qua* question; remembering that there are always men of whom the age is not worthy, and men who are unworthy of their age—to say nothing of men whose action may appear highly anti-social, but who believe it to be just the contrary, "the men who might bear as their motto, *tenuisse animum contra sua secula rectum*."

For want of a proper answer, in fact of any answer to our question, our laws have become a mockery, our penal administration an impossibility, our jails bursting as a result of the criminality of the criminal law, our police problem insoluble, and the community itself the victim of the contagion of ignorance which has removed the distinction between criminality and the condemnation, I will not say of society, but of the crowd. And of all things, that which was lately the supreme virtue—I mean success—has now become the greatest crime save the success of demagoguery alone.

I hold no brief for anyone. There can be no doubt that there are great criminals who go unpunished, and that innocent

men are in jail, but the statement of such a fact tends to no solution of any kind whatever. The danger and the seriousness of the situation is that we are confronted with problems which our present organization of society seems to be entirely unable to solve.

In a recent speech an eminent banker, Mr. Otto H. Kahn, speaking of the late Edward H. Harriman, said :

Mr. Harriman's attitude in respect to the law of the land has been much misinterpreted and misunderstood. To begin with, he had profound respect for the moral, the ethical law, and under no circumstances and under no temptation would he ever have done anything which was not justified before the tribunal of his own conscience, his own honest conception of right and wrong. To that conviction of the rectitude of his purpose and actions was added the firm belief in himself which is a characteristic of all strong men. He did not exactly look upon himself as a chosen instrument of Providence in the performance of his task, but he did have, and was actuated by, a profound and unwavering faith that what he, after mature thought, felt should be done, was best for the properties of which he was the directing head, was of benefit to the communities which they served, as well as to the country at large, and was ethically right and proper to be done. He chafed and fretted strenuously when the letter of some statute, possibly drawn without a full realization of its practical effects, stood in the way of what he considered to be absolutely proper and beneficial objects to accomplish. He was irritable and impatient at stupid laws, as he was at all stupidity. He had to be shown to his entire conviction that the law did clearly stand in the way before he would desist from a purpose which he deemed just and right, but the realization of which would not have been in accordance with existing statutes. If there were substantial doubt he would be tempted to resolve the doubt in favor of his purpose and go ahead ; whenever possible, he would be a law unto himself, but he never consciously went counter to any existing law except, to be entirely correct, that he may have winked at the infraction of one or two provisions of the railroad law which for many years, with the full knowledge and sanction of the constituted authorities, had lain dormant, and for lack of enforcement had come to be looked upon as unenforceable and as obsolete as the old Puritan blue laws.

What this very great man with a very great will of his

own was doing and was compelled by the state of the law to do, is being done by very small men, in a small way, but so far as society is concerned, with equally determined wills of their own; for, while they clamor for legislation, they have nothing but contempt for legislatures. The one thing about Mr. Harri-man which is certain, is that he was of the great creative social and not of the great destructive anti-social class, that he was typically social and typically not a criminal, and yet it would seem that we have got to find another classification for such men, because there is bound to be a conflict, as there has al-ways been from the beginning, a conflict between such men in their social groups and the greater social group which we call the state. But just here we encounter another popular doctrine, that it is better that ten innocent men of this class should go to jail than that one should escape. The muddle seems hopeless and the demagogue alone claims to possess the key.

The question is, whose the fault, if there be this conflict of wills between the statesman and the economic master builder, both of them upbuilders, both social institutions, and certainly neither of them unsocial ones? Is it the fault of the individual or the fault of the form of the state? Is it the fault of the general breaking down of the clear and clean circumference of the ethical order and the substitution in its place of a sort of haze or indistinct fringe? Is it the general contempt which law has brought upon itself through the blind worship of the principle of salvation by legislation? Is it the result of the ignorance of the law makers? Is it the result of the incapacity of those who enforce the law? Is it the result of society as a whole? Whatever it may be the result of, it is certainly, I believe, the result of our belief in salvation by legislation, of our belief that legislation may erect into a crime that which society does not believe to be a crime, that it may fail to punish that which society believes to be punishable. It may also be the result of a diffused ungodliness that comes from reckless commercialism, issuing out of that melting pot of races, religions, traditions, ambitions, which our partisan political scheme under the name of democracy has become. It may be due largely to the fact that it takes the unanimous

decision of twelve men in a jury to make a criminal as the word is understood in law, but by construction from the bench it takes only a majority to condemn, which is but a further illustration of the fact that the law is not alike for rich and poor, but may be as distinctly unjust to the rich as it is unjust to the poor.

The difficulty with most of the so-called criminal law is that while it is legislation it is not really law, and as law it has no uniformity or certainty, because, to use the words of the logicians, it fails utterly to distinguish between the assertative and the apodictic. Such statutes may be apodictic so far as concerns the statement of the legislature's conception of the duty of the state, *i. e.*, in so far as they use the word "shall," but beyond that they are purely assertative and simply an infinite number of hypotheticals. They thus become merely assertative and not laws at all, and thus lie wholly outside the common consciousness of crime and criminality. Legislative declarations of this kind are, therefore, not categorical but hypothetical, purely probative in requirement and without place in the moral order. They do not fall properly under the category "crime," but simply under the category "forbidden and penalized," *i. e.*, the category in which might may exercise itself quite independently of any consideration but temporary political expediency. It does not follow that everything that is punishable is a crime, unless it be crime because that is the very definition of crime. Otherwise sneezing in a street car may fall within the category as the Honorable the Board of Aldermen may decree.

Even Blackstone's definition, which did have some relation to the historical development of crime, does not suffice. He says a crime is "a rule of civil conduct prescribed by the supreme power of a state, commanding what is right and prohibiting what is wrong," whereas all that it is, according to common definition, is a rule of civil conduct prescribed by the supreme power of the state and punishable upon proof as the state may prescribe.

A part of our criminal law is permanently established, and so far as it is substantive law, a great part of it is virtually infalli-

ble, although so far as it is adjective law the whole scheme, substantive and adjective, is rendered very fallible precisely where the need of success is greatest and just where the danger of fallibility is least—but this raises points outside the scope of this paper.

We need no law against cannibalism, although there was a time when such a law was badly needed. It is because the condemnation of cannibalism has entered irrepealably into our permanently established moral code. The meanings of moral terms change continuously, change with every advance, with every evolution, as with every disintegration of society. So it is with our legal terms; as society advances we give constantly new meanings to old words. We could have no better illustration for instance than that of larceny. Today there are a thousand larcenous acts which would have been unintelligible to older law because the occasion for these acts, the opportunities out of which the occasion arose, never occurred.

I believe that we shall find that the only ultimate cure for our law is the widening and deepening of our ethics. No law can be better than the people, and after all is said and done our sins are our own, and we are generally very kind to them and very hypocritical about them. To quote a thoughtful English writer, "We need to recognize that with every step in the organization of society questions of morality assume more and more a social character and become less and less of private and individual concern."

A man, to be a good citizen—and this is supremely true of the man who is to be a good legislator—should act not upon ancient standards and not wholly upon present standards even, but should have in view those inevitable future standards which are visible to all men who have the clairvoyance of goodness or wisdom. Let me close by quoting from Mr. Jacks' *Alchemy of Thought* (p. 290), where I find what I want to say in conclusion infinitely better said than I could say it myself:

There is no man living in society to-day who is not an accessory either before or after the fact in many a complicated process by which extensive harm is done to his fellowmen, and there is no doubt that pos-



terity will judge this complicity by a standard quite out of keeping with the epitaphs we now engrave on the tombs of our most respected relatives and friends. A man who receives an income he has not earned may do so in good conscience; but his conscience will be all the better if he clearly understands that he runs the risk of standing before the morality of the future precisely as the moss-troopers and pirates of the sixteenth century stand before the morality of to-day. There is a host of questions of this kind which awake in fresh forms with every change in the ever-changing complex of human society. It is here, on the frontier line, where we stand facing those new regions into which the voice of authority has not yet penetrated, that the burden, the responsibility, and the splendor of the moral life exist for us all.

Let us remember also that the sanctity of established morality can be maintained only so long as we are continually developing the implications of the Moral Ideal. In vain do we try to persuade Bill Sykes to give up his profession in a society where worse forms of malpractise than his are, I do not say condoned, but not even recognized for what they are. We should be well advised to deal gently with Bill Sykes in this matter. At all events, we can easily avoid the mistake of superimposing our conscience on his, or of thinking that his moral "problem" in the presence of an unguarded cash-box is the same as our own. If we would judge Bill fairly we should think, not of what we should feel and do in regard to the cash box, but of what we should feel and do on realizing that the money in our pockets represented another man's labor rather than our own—and in regard to many other matters of the same sort about which we are not altogether comfortable in mind. Few of us dare claim an infallible scientific authority for what we do in these matters, stoutly as we may argue in defense of the action we take; and it is for that very reason that these disputable and disputed situations afford an opportunity for displaying the moral, or immoral, bias of our wills.



## THE RELATION OF THE CRIMINAL TO SOCIETY<sup>1</sup>

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ANY discussion today of the relation of the criminal to society must start from the discrimination so clearly presented in the admirable analysis that Mr. Ivins has offered. If we are to assume that every man who commits a crime is a criminal, and that every act which the legislature has forbidden, and penalizes, is a crime, we shall have to define the population of the United States as ninety-seven millions mostly criminals, whether they are mostly fools or not. In fact, it would be difficult to find a man fifty years of age in the United States who is not a criminal. I doubt if, judged by such standards, there is a person now present in this room who is not a criminal.

There is however, one aspect of this question that we can get at directly, and that we shall find helpful for practical purposes.

Let it be true that a large proportion of the acts which legislatures define as crimes, and penalize, are not gravely injurious to society or a menace to the future of mankind, but that, nevertheless, another large proportion of forbidden acts really are crimes in a large sociological sense. Then, let it be true that while most men commit technical crimes from time to time, or once in a lifetime, some men live by committing forbidden acts, many of which, in a sociological as in a technical sense, are felonious and infamous.

There are, then, in society men who, either because of peculiarities of character or because they find in this course a career, are habitual offenders. For practical purposes they may be called criminals. Society must make war upon them, as they habitually make war upon society. An interesting question therefore arises.

Are the relations between society and these habitual offenders

<sup>1</sup> Read at the Conference on the Reform of the Criminal Law and Procedure, May 13, 1911.

—offenders who make offense a career—such that on the whole we multiply them? Is the warfare of society upon the criminal class on the whole a losing one for society?

If, in all cases, we treat the man who has committed a crime as if he were a criminal, do we diminish or enlarge the criminal class?

For generations we have been trying the experiment. Whoever has committed a crime in the technical sense has been regarded as criminal and treated as a criminal. The offender may be a young boy, or a young girl. The boy or the girl is perhaps put in a police cell, and sent later to a place of detention, to feel disgraced, to lose self-respect, and be thrown into association with professional criminals, and taught the rules of their game. In this way society for generations has been creating criminals, and a criminal class. Perhaps the most hopeful thing that can be said today about the relations of the criminal to society is that we are beginning to see the folly of such a system, and to change it. We are beginning to see the wisdom in many instances of dealing with the person who has committed a first crime, on the assumption that he is not yet criminal. The parole system sends him forth without a brand, to try again.

All that can be said at the present moment of this plan is that in so far as it has been tried in good faith, it has worked well, and that on the whole we are somewhat diminishing the systematic production of criminals, by ceasing to treat all persons that have committed a single crime as if they were criminals.

On the other hand, it has been our practise for generations to deal with the man who has over and over again committed crime, and has shown a disposition to make war upon society, whose crimes have been perhaps of many kinds and degrees, precisely as we have dealt with the first offender. The other day before one of the judges in New York was a man who, by his own confession, has been in state prison six times. Happily some slight beginnings of wisdom are discernible at this point also. We are beginning to see that just as we must stop the practise of treating the man who has committed a

merely technical crime as a criminal, we must stop the practise of treating those who live by crime as if they were merely technical offenders against merely technical law.

We have been much too sentimental and too soft towards the true criminal. Now and then someone discourses on the horror of that chapter in the history of Great Britain when it was the practise, as the saying is, to hang any man who had stolen anything of the value of a sheep.

When we send to jail the man who perhaps under great stress has for the first time committed an offense, even so serious an offense as theft, we may be making a criminal of a person who need not necessarily become criminal; but if we turn loose upon society a man who habitually, whenever opportunity offers, will steal the value of a sheep, we are doing an equally wrong and foolish thing. To the extent that England cleaned up her population by hanging a lot of people with a propensity to live by theft, she did one of the best things for civilization ever done by any community since time began.

We want to diminish the warfare between society and the criminal class. Why? For this reason, among others. We are experimentally trying to organize and to maintain a democratic social system. By this we mean a social system in which, on the whole, men are so much alike that they can mentally and morally get together and solve their problems by mental and moral processes, by good understandings, and voluntary agreements; in which, on the whole, men and women are so nearly equal in substantial things, that they can be treated as equal before the law; in which, eventually, we may claim to have realized to some extent the ideals of personal liberty, of equality (in some large and broad sense), and of fraternity in social relations.

Now, there are certain things which the sociologist, as a man whose business it is to study the possible and the probable combinations among the elements that make up a social situation, is obliged to declare impossible. There are imaginable combinations that stand in contradiction, one to the other, and exclude one the other. We cannot, for example, have a democratic society if we have too many radical differences among men, and

too great extremes of inequality of condition. We cannot go on the assumption that men are free and equal and can be treated alike, if, as a matter of fact, they are fundamentally different, instinctively and in habitual conduct.

With such differences one of two things will happen. There will be a government of the drifting sort, in which there will be no efficiency anywhere: in which nothing quite worth while is ever done, and in which the things that are done are done at such enormous waste of money and of energy that they might as well be left undone; or some strong group of individuals or a powerful class will come to the fore and take charge of things. It will lead, laying a strong hand upon the masses of indifferent, planless people, and presently we shall have a coercive society instead of a democracy. Then things will be done and done well, because done by the class that knows how to do them. There will be achievement, but also there will be a frank discarding of the notion that one man is as good as another, and should be treated as another.

If we are to avoid this outcome of our social experiment we have to get rid of some of the profound differences among men, and of some profound inequalities. We have to get rid of such differences as that between groveling ignorance and great enlightenment, as that between hopeless, widespread poverty and irresponsible, ostentatious wealth, as that between professional criminality and unselfish service of fellowman.

In these matters we may generalize the remark of Lincoln—we cannot have a community half slave and half free—we cannot have a democratic society half criminal and half altruistic.

We must face the problem of the extermination of the criminal, meaning by the criminal, not every man who has committed a crime, but the man who makes a business of committing and living by crimes.

We must face it practically. We must stop the production of criminals out of first offenders through treating them as if they were criminals. We must stop making the business of the criminal a safe and profitable enterprise through treating professional criminals as if they were a harmless or even a respectable and much-admired part of human society.

## SOME CONSEQUENCES OF UNENFORCEABLE LEGISLATION <sup>1</sup>

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THERE is a goodly number of very estimable persons who, either because they live too far removed from the haunts of men to know how and why things happen in this work-a-day world, or because they themselves believe all they see in print, or because they take too seriously the boasts of our Fourth-of-July orators that ours is government of laws and not of men, hold firmly to the opinion that there is in a statute a certain alchemy whereby the elements of leaden soddenness and brazen vice that enter into the composition of society may of an instant be transmuted into the pure gold of spirituality.

They conceive, apparently, that by some process of hypnotic suggestion a law upon the statute books will induce in the community the virtues which, through its enactment, the community officially professes; and they are so enamored of the idea that they will insist upon the retention of a law even though the experience of centuries may have taught that the community will have none of the law and that virtue is not induced by it. Hence they insist upon enactments such as our Sunday liquor laws and the statutes requiring the total suppression of prostitution by criminal process.

Presumably, they do not realize that a statute may be inherently unenforceable, and that statutes such as these which do not appeal to the community as wise or just or expedient will not and cannot be enforced. Apparently, they do not know that such a statute almost inevitably entails consequences worse than the evil at which it is ostensibly directed, and it probably shocks them inexpressibly to be told that they are

<sup>1</sup> Read at the Conference on the Reform of the Criminal Law and Procedure, May 13, 1911.



among the most effective—even though the unwitting allies of the blackmailer, the pander, and the crooked politician, and that the demoralization of police departments, the stimulation of prostitution and the horrors of the white-slave traffic are in large measure to be laid at their door.

To most of us this is an old story, yet the delusion persists, and the persistence of the delusion among those who exert so much power for harm, when they have so much power for good, is my excuse for the demonstration of the obvious to which I am about to proceed.

There is recorded by historians of the criminal law an enactment among the laws of King Canute, in the following terms: "Though anyone sin and deeply foredo himself, let the correction be regulated so that it be becoming before God, and tolerable before the world, so that punishment be inflicted and also the soul preserved."

Thus at an early stage of the system of jurisprudence and penology of which our own is the lineal descendent, there was a recognition of the potential divergence between ethical ideals and their practical realization in the administration of the law, which is the subject to which I am to direct your attention today.

Penalties, according to Canute, were to be not only "becoming before God," but "tolerable before the world;" and while it may be that the antithesis which was thus presented was unintended and that the interpretation which I put upon the edict would have shocked inexpressibly its devout author, it is certain that thus interpreted the edict enunciated a principle whose soundness has been demonstrated throughout the history of the criminal law.

For it is, of course, familiar history that no law which was not "tolerable before the world," that is, which did not appeal to the general body of the community as just, moderate and in conformity with the public needs, has been permanently enforceable, except, perhaps, by the strong arm of a despotic government. This was true to some extent even in early times and under conditions in which the community at large participated but slightly in the administration of the law; for hostility to



such enactments has been as manifest among the judges and others charged with the administration of the laws as among the people upon whom their unduly heavy hand was designed to fall.

In earlier days and under despotic governments, it is true, unpopular laws might be enforced for a time, provided that it was the desire of the ruling authority that the law be enforced, since administrative officers and judges who were appointed by the crown and subject to direct penalties for disobedience to the sovereign will, and jurors who were likely to find themselves in the prisoner's place if the verdict was displeasing to the judge, were under a powerful incentive to abide by their respective oaths of office and to apply the law to the facts as they found them, without too nice a regard for the eternal fitness of things as it appealed to their individual minds or consciences. Under the milder conditions of our day and generation, however, when jurors are wont to be a law unto themselves and to confer favor without fear, it has become clear that such laws are absolutely incapable of enforcement, and that where a penal statute does not appeal to the general body of the community as wise or fair or expedient, it becomes a dead letter. The public opposition manifests itself at the polls, in the grand-jury room, in the petit-jury box, and not infrequently on the bench itself. Of this we have had the most convincing proof in the history of legislation against the liquor traffic and the social evil.

It is familiar history that candidates for office have been elected to it on the basis of their promise to ignore the restrictions of the excise laws; that officials, otherwise exemplary, have been denied re-election because of attempts to enforce the law; that such occasional attempts at enforcement as have been made have always been futile for the reason that grand juries refuse to indict and petit juries to convict, and that judges decline to impose sentences of sufficient severity to have any deterrent value. For illustration we need not depart from our own city. We have all seen estimable gentlemen bidding for election to the mayoralty of the city of New York on the basis of the promise that the excise law—as to Sunday opening of saloons—would be “liberally enforced,” a phrase which was hardly a euphemism for non-enforcement.

At the present day we have the same law nullified by an executive interpretation of the statutes governing the method of enforcement, an interpretation which I believe will impress most lawyers by its ingenuity rather than by its soundness, but to which the community is glad to lend its assent, as it is ready to yield assent to any device which will prevent enforcement.

Moreover, the nullification of the law is in no wise dependent upon executive inaction. Rather it is the fact that executive inaction finds palliation if not excuse in the fruitlessness of activity; for it is a well-known fact that in this city grand juries are loth to indict and petit juries absolutely unwilling to convict for violation of this provision of the law, and that this is true no matter how conclusive may be the evidence that the law has been violated.

Moreover, the courts themselves have assisted in the process of nullification. Under the law in this city, the cases are triable at a court of special sessions, unless removed to the court of general sessions upon a certificate that the case ought to be tried by indictment. The court of special sessions sits without a jury, and its judges are triers of both the law and the facts. Its judges are subject to removal by the appellate division of the supreme court for violation of judicial duty, and a persistent course of decisions counter to the law and the facts would warrant their removal. Hence, if the cases were permitted to be tried at the special sessions, convictions would probably result. But the general statutes also provide that any charge of misdemeanor may be removed from the special sessions upon the certificate of a judge of certain higher courts to the effect that the case ought to be tried by indictment. With respect to offenses in general, this section has been so construed as to limit such removals to extraordinary cases involving either novel questions of law or property rights of great importance. In excise cases, however, under the practise of the courts, removals have become a matter of course. Hence, the prosecution is transferred to the grand-jury room where it usually receives its quietus by the refusal to find a bill.

Through these various agencies the law against Sunday selling has become a dead letter. On the other hand, other provisions

of the same statute are readily and easily enforced—I refer, for instance, to the provisions penalizing unlicensed selling. For this offense the administrative officers are ready to arrest, juries are ready to convict, and the courts are ready to punish. The reason is that the general body of the community believes in the regulation of the traffic through the license system, and that it does not believe in the prohibition of Sunday selling.

And so of the laws against the maintenance of houses of prostitution—I do not mean of the entire body of law directed against the practise of prostitution and offenses kindred to it or growing out of it, but the law which makes it a crime to maintain a house in which prostitution is practised even though in all respects it is quiet and orderly. Theoretically, the maintenance of such a house is punishable either as a nuisance or under a special statute in nearly all the states of the union at the present day, and has been so punishable ever since there was a government on this side of the Atlantic, as it was punishable before that in England. Yet, I think it probable that there is no city in the United States or in England, for that matter, where such houses, in one guise or another, do not flourish to-day and in which they have not flourished uninterruptedly and without substantial interference for the past fifty years—to go back no further—unless we accept as accurate the conclusion of the president of the police board of Jersey City, that he has been able to drive all the prostitutes out of that city by reason of its proximity to New York,—and on that basis concede a single exception to the rule.

In most of these cities they are conducted openly and with no attempt at concealment. In some they are segregated, subjected to regulation and even to medical inspection at the instance of the police, who in every such case are, theoretically, indictable for their neglect of duty in failing to arrest and prosecute, and who, theoretically, furnish evidence for their own conviction every time they conduct an inspection or enforce a regulation. In other cities they are tolerated with no avowed attempt at regulation, and while there is no trustworthy evidence on the subject, it is reasonable to suppose that in all these cities such houses are blackmailed.

For the persistence in this open defiance of the law, the police are little to blame. They know that they could not enforce the law if they tried, and they know, as we know, that the community does not want it enforced, because the community, rightly or wrongly, believes with Lecky and others that prostitution in some form or other is a necessity, and that it is only by the sacrifice of a certain percentage of the women of the community to a life of prostitution that the sexual integrity of the great majority can be preserved from violation through seduction, fraud or force.

It is unnecessary to inquire, and it is beyond the scope of this paper to inquire, whether that conviction is sound; it suffices that it is deep-rooted and persistent—so deep-rooted and persistent that any man who to-day in this city should endeavor to suppress the houses of prostitution would, by a large part of the virtuous and intelligent portion of the community, be regarded as little short of a public menace.

If any one is moved to doubt these conclusions, either as to the possibilities of enforcement or as to the temper of the community, let him but read the last report of the Boston police commissioner. Commissioner O'Meara is a repressionist, and, as a man of intellectual as well as financial and moral integrity, he has no patience with the devices of "liberal enforcement." For the past five years he has been doing his best, patiently and with a grim determination, to enforce the law. He has been fighting under what is theoretically an extraordinarily efficient system of laws, since in Massachusetts the statutes are logical. There fornication is a crime for which men and women are alike punishable, and the men found in the bawdy houses can be prosecuted.

His results can be summarized as follows: He secured a large number of convictions, but few sentences of deterrent value; he closed a number of houses, some temporarily, some permanently. As a result, the resorts have become scattered, the business has become modernized and has taken on a form more insidious and more difficult of detection; the street soliciting has gone on, and the community has grown indifferent. His final word on the subject sums up the results of his experience with the public as follows:

The police department regards the business of vice as a social tragedy which has gone on from the beginning and presumably will continue to go on to the end ; but police action against it is confined, of necessity, to the attempted enforcement of the laws. The police have no other mission or authority, and their efforts to reduce the profits of the business, to secure the adequate punishment of those who engage in it, and thus check its growth, have met with practically no helpful or appreciative response from any direction. If a future police commissioner were intending to pursue the same course with respect to the business of vice that has been followed for four years, I should advise him that he might expect loyal support from the police when once he had convinced them that he was in earnest ; little encouragement from courts ; bitter hostility from persons whose profits were curtailed ; indifference from the public ; and from a few enthusiasts in the cause of social purity, whose admirable purposes are not sustained by straight and intelligent thinking, he would be sure to receive some measure of abusive criticism. I should advise him that unless he held his oath of office in high regard, and cared for no reward other than the consciousness that he had done his duty faithfully and with some benefit to the community, it would be better for him personally that he should follow the easy road of indifference, which is always chosen by those who are officially blind.

The verdict of his experience is, I believe, conclusive ; it is the confirmation of the conclusions of nearly all who, having equipped themselves to think, have given serious thought to the subject. Where he failed I believe it impossible that anyone else should succeed.

But what of all this ? it may be asked. Assuming that this is the temper of the community, is there not a respectable minority, at least, that believes in Sunday closing and in the suppression of the bawdy houses ? Is it not true that at some time there must have been a majority holding such belief, else there could have been no such statute ? And is it not true that unless the majority held to it now, the statutes would be repealed ? And, finally, is not an unenforced law, if it embodies an ideal, better than no law at all ; and is it not better that the higher aspirations of the community should be registered on the statute books, to the end that the community may have a tangible expression of its ideal to stimulate it to the achievement of that ideal ?



The argument shadowed forth in these questions is seductive, and it is because it has by its seductiveness captured the minds of the people who, if they saw the other side as I see it, might bend their energies toward so harmonizing the law with the belief of the community as to make it an instrument for good instead of an engine of evil, that I have been moved to present that other side.

Three questions are thus proposed: First, is it not true that at some time there must have been a majority holding the belief that bawdy houses ought to be suppressed? Second, is it not true that unless the majority now hold to that belief the statute would be repealed? Third, is not an unenforced law, if it embodies an ideal, better than no law at all? The last question is perhaps the only one which is strictly germane to this discussion; but as the first two tend to create a doubt as to the major premise of my syllogism, namely, that the laws in question do run counter to the real sentiment of the community, it may be worth while to pause for a moment in order to suggest the answer to them.

To anyone familiar with the methods whereby legislation is secured, even at the present day, it is hardly necessary to suggest that the enactment of a statute does not indicate in the least that a majority of the thinking people of the community desire its enactment or that they are interested in the subject. We all know that the laws find their way upon the statute books, either because some few thinking people, in or out of the legislature, have succeeded in persuading the legislature that such laws will make for the public good, or because some designing people have a personal and selfish interest to serve which the enactment will further; or from a combination between the well-intentioned people, who, by their very rectitude, are incapable of imagining the evils that a law may entail, with persons whose imaginations run only in the direction of self-interest, and who see only the opportunity for pecuniary gain through the non-enforcement of the law; and that it is rarely that a law is enacted because of any widespread public demand for its passage. We have no reason to believe that in other times laws originated in any different manner; and, on the contrary,



there is every reason to believe that under less democratic forms of government, laws were even less likely to be enacted primarily in response to a public demand. And indeed we have the opinions of leading historians of the law that the more stringent laws on this very subject of sexual immorality found their way to the statute books in 1650 because "the ruling powers found it to their interest to put on a semblance of very extraordinary strictness and purity of morals," and that these laws were thus enacted in response to that policy which is described by the politicians of our day as "pandering to the virtuous element of the community." So much for the argument as to the original enactment of the statutes.

The argument that is derived from their retention is answered by the fact that the general body of the community has little incentive to seek the repeal of an unenforced law, and that those who have such incentive, namely, those who would suffer punishment if the law were enforced and who through its non-enforcement suffer from it only in that they are the subjects of blackmail, are not likely to be accorded a favorable hearing even if they dare lift their voices in opposition to the law, and are sure to meet with instant, vigorous, and clamorous opposition both from those whose duty it is to enforce the law and who profit by its non-enforcement, and from those excellent people who believe that it is better that their higher aspirations should be registered on the statute books in an unenforced law than that there should be no law on the subject at all.

We may, therefore, discard all the arguments as to the enforceability of such laws which are based upon their original enactment or their retention on the statute books, and accept unhesitatingly the verdict of experience that the laws cannot and will not be enforced.

We come then to the third question, which opens the real subject of this discussion, namely, Is it better that there should be on the statute books an unenforced law which is expressive of a higher ideal, than that there should be no law on the subject at all? In seeking the answer to this question, let us look at the consequences that flow from such a situation. These consequences are patent, indisputable, inevitable. They

include: the undermining of the public conscience through the spectacle of continuous and deliberate neglect of duty and violation of the oath of office by public officials; the more direct undermining of the sense of civic obligation and of the obligation of the oath, through the disregard by the individual of his own oath in the grand-jury room and in the petit-jury box; blackmail with the increase of political power that it confers upon those that profit by it—concededly the most vicious element in our political life: the demoralization of the police department, as the result of the blackmail; the creation of a partnership in crime between the keepers of disorderly resorts and the police; as the result of that partnership, the non-enforcement of laws which are themselves inherently enforceable, and which the community would insist upon having enforced but for the unenforceable provisions of the statutes with which they are confused in the public mind and the conditions those unenforceable provisions create; and thus the toleration of the horrors over which the community shudders when a Lexow Committee or a white-slave crusade brings them prominently into the glare of the sunlight, and promptly forgets when the committee's report has been filed or the grand jury has disbanded after recommending as a panacea some reform of administrative detail which is bound to be ineffective because it fails to attack the cause of the evil.

I can touch but lightly upon the less important of these consequences, and indeed they are so obvious that the bare statement of them will suffice to demonstrate their existence and to suggest their far-reaching and injurious effects. Thus, it needs no argument to establish the vitiating effect upon the community at large of the known existence and known unenforcement of statutes such as we are discussing; especially when it is accompanied by such exhibitions of intellectual disingenuousness from respected citizens in high office as find expression in phrases about "liberal enforcement," and in arguments with respect to the necessity of devoting attention to the infraction of other and more important statutes, and the consequent necessity of ignoring the violation of the unpopular laws. Nor is it necessary to debate the demoralization of the individual which re-

sults from the habitual disregard of his solemn promise made in the grand-jury room or the petit-jury box, to apply the law as it is laid down to him to the facts as they are established before him. Manifestly such experiences can result only in a weakening of respect for the laws as such, and in a general belief that the citizen owes no obedience to a law because it is a law, and that he is bound to obey only those laws which meet with his approval.

Nor is it necessary to discuss the rise of blackmail as the result of such statutes. That it must result is apparent to any thinking mind. That it does exist is the uniform testimony of all who have had occasion to deal with the question. According to the public prints, the mayor of this city has recently asserted that, as the result of his particular methods of dealing with the laws against Sunday liquor-selling, the blackmail had been reduced by \$3,000,000 per annum. It is not necessary to deal with the accuracy of his conclusions that the blackmail has been eliminated, though it may be said in passing that his method is one that leads to non-enforcement, and that if it has eliminated the blackmail and not merely diverted its course and perfected its organization, it has been by making it clear that he will not permit the ex-blackmailer to enforce the law. The immediate point is that he testifies to \$3,000,000 as the amount of the blackmail from that source alone. The blackmail from prostitution is, in the nature of things, difficult of approximation. The recent report of the Chicago Vice Commission, after what appears to have been a careful and conservative census, places the number of regular prostitutes in that city as 5,000. It is fairly safe to assume that in the larger cities of the same general character as to population and surroundings, the number varies approximately as the population. Upon that basis the number for New York would be between ten and twelve thousand. Some guesses have placed it as high as 30,000. There was evidence before the Lexow Committee, and there has been evidence since, of payments at the rate of about \$20 per prostitute per month. At this rate, and accepting the number of prostitutes as 10,000, the direct blackmail would be about \$2,500,000 a year. All this is paid either to

the police, or to that lowest of all types of politicians whose power is largely derived from the misuse of the funds he has thus secured, and from the power for all kinds of villainy that his control over the dregs of humanity affords him; but whose utter degradation does not always prevent him from occupying an important place in the counsels of his party.

That demoralization of the police department—and by this I do not mean the occasional decrease in efficiency, real or alleged, such as has recently been the subject of popular discussion in this city, but a general, persistent, devitalizing, chronic demoralization,—must result from these conditions is also obvious to all who will give the subject a moment's thought.

How can it be otherwise? How can it be expected that the police will resist the temptation to be venal, when as the result of mere passivity on their part riches will pour into their coffers in almost torrential streams? There have been police precincts in the city where the monthly income from illicit sources has been rated at \$30,000 a month—\$360,000 a year. Not all of this went to the captain of the precinct. He divided with those higher up, in varying proportions and to varying altitudes in different administrations; but if only one-sixth remained with him, and if his income from those illicit sources was only \$60,000 a year, was it reasonable to expect that an officer whose salary was \$2,750 a year would refuse to accept it, and would choose rather to enforce or to attempt to enforce a law which the community as a whole desired to see forgotten?

Of course, it is horrifying that he should levy or accept blackmail, and it is easy for those of us whose temptations are of a different order to look with disdain and disgust upon these practises. But let us examine his course of reasoning, and see whether his acceptance of blackmail is not, as human nature is constituted, practically inevitable.

He can drive the prostitutes out of the houses of prostitution only by extra-legal methods,—for convictions followed by the fines which the courts as a rule impose, have but little deterrent effect. As Commissioner O'Meara says, they are paid, charged to profit and loss, and the business goes on. If he does drive them out, what has he accomplished? Driven from the houses,

where on the whole they do the least harm, they will frequent the Raines-law hotels and walk the streets. If he drives them off the streets, they will go back to the houses or scatter through the tenements, and the net result of his activities will be the harassment of some hundreds of human beings, whose lot is at best none too enviable, and the distribution of their activities over fields hitherto uncontaminated by them.

Hence, he may be conceived as saying to himself: "Why should I enforce the law? Nobody wants it enforced, and nothing but harm results from the attempt. On the other hand, is it not fair that I should be paid for my acquiescence in what the public wants? For do I not run a risk of removal from the force and even of criminal prosecution whenever a reform wave strikes the community or a hostile police commissioner wants to get rid of me; and if I am to serve the public by recognizing its hypocrisy and giving it what it wants in spite of its pretense at forbidding it, and if I am to render this service at such personal risk, why should I not receive a remuneration commensurate with the risk?" And so he becomes a social philosopher of the *laissez-faire* school.

There is no need to expatiate upon the sophistical character of the argument, but it is a familiar trait of human nature that men find little difficulty in believing what they want to believe; and \$60,000 a year has been known to affect the creeds of persons higher in the social and educational scale than policemen.

What of the effect of these practises upon the rank and file of the department? They have heard promulgated by the chief executive of the city the general doctrine of "liberal enforcement." They have received specific instructions from the precinct commanders as to the degree and direction of the liberality, and they know how liberally the liberality is being reciprocated. More specifically, they all know that the captain and those higher up are "getting the stuff." Why should they not get theirs, not only from the saloon-keeper and keeper of the brothel, but for that matter from the pickpocket and thief and burglar? For if it is legitimate according to the rules of the game to take money from the continuous offender, why not from the casual offender? Of course, there is a flaw in



this logic, but then the patrolman does not pass a civil-service examination in logic, and logic has been known in other walks of life to weigh lightly on the scales when the pocketbook was in the opposite pan. Certainly, there can be no incentive to rectitude and honesty and obedience to duty in the example thus set before the eyes of the patrolman; especially when he has opportunity to observe that it is the grafters in the department who get promotion, and that the policeman's progress is not even as that cynically attributed by Sydney Smith, I think, to the lawyer, namely, that "first he got on, then he got honor, then he got honest"—since whatever else happened to those who rose in the ranks of the police and whatever else they got, they rarely got honest.

Is it necessary to expatiate further upon the effects of these conditions upon the morale of the rank and file? Is it conceivable that they could lead to anything but utter demoralization? Is it conceivable that a body of men thus led could form any ideal other than that of getting rich by hook or crook, or literally by "hook and crook," if the slang may be forgiven. And certainly it is no small thing in a community to have ten thousand of its picked men, men picked for their superior physical and mental endowments, thus corrupted.

In the face of such a system, who and what is a police commissioner? In the face of the solidarity that results from the concerted hunt for plunder, what can he hope to accomplish?

We hear much of the difficulties of a police commissioner's situation. Under present conditions they should be described as the impossibilities. But I have had police commissioners say to me, and I dare say that almost any police commissioner who will talk frankly will say to anyone, that his office would have no more than the ordinary administrative difficulties, that the duties would be easy of performance, if it were not for the situation created by the absurd laws on Sunday opening and on prostitution. And so I conceive that one of the prices that we of this city pay for these laws is the demoralization of ten thousand of our picked men and the corruption and essential insubordination of our police department.

Yet all this I believe to be among the lesser evils. The



greater evil by far lies in the effect of these laws in preventing any rational treatment of the social evil and in delaying the day which it is hoped will dawn in a not too distant future when repressive measures may be effectually invoked.

The worst evil is that through these measures the police, who, under a rational system of laws, ought to be available for the minimizing of prostitution and the extirpation of some of the horrors which are incident, but not necessarily incident, to it, have become partners in the business, and thus blinded by their self-interest even to those offenses which, whatever may be said of prostitution itself, are neither necessary nor "tolerable before the world." I mean prostitution in tenements before the eyes of the children of the poor, street walking, and the practises of the Raines-law hotels, and, worst of all, the debauching of women for the purpose of prostitution—the hideous trade of the "cadet." The partnership between the police and the keeper of brothels is no mere figure of speech. It is a living, shrieking fact. If sharing of profits and coöperation in the conduct of a business constitute a partnership, then such a partnership exists.

The picture was painted some sixteen or seventeen years ago by the Lexow Committee in vivid colors:

The testimony upon this subject, taken as a whole, establishes conclusively the fact that this variety of vice was regularly and systematically licensed by the police of the city. The system had reached such a perfection in detail that the inmates of the several houses were numbered and classified and a ratable charge placed upon each proprietor in proportion to the number of inmates, or in cases of houses of assignation the number of rooms occupied and the prices charged, reduced to a monthly rate, which was collected within a few days of the first of each month during the year. This was true apparently with reference to all disorderly houses, except in the case of a few specially favored ones. The prices ran from \$25 to \$50 monthly, depending upon the considerations aforesaid, besides fixed sums for the opening of new houses or the resumption of "business" in old or temporarily abandoned houses, and for "initiation fees" designed as an additional gratuity to captains upon their transfer into new precincts. The established fee for opening and initiation appears to have been \$500.

Thus it appears that transfers of captains, ostensibly made for the purpose of reform and of enforcing the discontinuance of the practise, the prevalence of which seems to have been generally understood, resulted only in extortion from these criminal places of additional blackmail. . . .

As an evidence of the perfect system to which this traffic has been reduced, your committee refers to that part of the testimony which shows that in more than one instance the police officials refused to allow keepers of disorderly houses to discontinue their business, threatening them with persecution if they attempted so to do, and substantially expounding the proposition that they were there for the purpose of making money to share with the police.<sup>1</sup>

This, to be sure, was in 1894, and that is long ago, but substantially the same conditions were found by the Mazet Committee in 1899, and by the Committee of Fifteen and the district attorney in 1901, and I have no doubt that while conditions may in some respects have changed, there is today no difference in the essentials.

Now, what is the first result of this partnership? Naturally, stimulation of the business. The more prostitution the greater the revenues of the police; and this applies, under existing laws, to the business of the street-walker as well as to prostitution in the organized house; for let it not be supposed that the police have been so careless in their business methods as to overlook the small profits to be reaped from the street-walker. The Lexow Committee found that there was no leak in this direction. They reported:

The evidence establishes, furthermore, that not only the proprietors of disorderly houses paid for their illegal privileges, but the outcasts of society paid patrolmen on post for permission to solicit on the public highways, dividing their gains with them.<sup>2</sup>

In the trial of a police captain some ten years ago, there was testimony of the method whereby these pickings were safeguarded. Men were employed to walk the streets and accom-

<sup>1</sup> *Report and Proceedings of the Senate Committee appointed to investigate the Police Department of the City of New York.* Albany, 1895. Vol. i, pp. 33, 34, 35.

<sup>2</sup> *Ibid.*, p. 35.

pany street-walkers who solicited them, to note their names and addresses and to report them to the captain. Upon such report the captain examined a little book. If the woman was registered and had paid her dues to date, all was well; if she was not registered, or had not paid her dues, she was immediately served with an order to show cause why she should not subscribe a sum—I think it was \$20 a month—to the support of the police system, and there was as a rule no disposition to evade the order.

Moreover, this partnership does not stop at mere sharing of profits, but involves, as it would be expected to involve, co-operation in the conduct of the business. It is of course a familiar fact that the efforts of private individuals to obtain evidence and to take measures against houses of this character, have met with the constant opposition of the police and that such efforts as a rule have been frustrated by them. This is bad enough, but the community of interest leads to coöperation beyond such defensive measures.

One of the necessities of the business of prostitution is the raw product. If prostitution is to be maintained, a certain amount of raw product must from time to time be supplied, and the greater the stimulation of prostitution, the greater must be this supply; also the more hazardous the business, the more recklessness in using and abusing the supplies.

Of course, it is a horrid trade, but then "business is business" and always has been. It is part of the history of negro slavery that some of the slave owners in the south found it more profitable to work their "niggers" to death and buy new ones, rather than to work them rationally and conserve their lives and energies; so it is not too much to be wondered at that some of the slave drivers of the prostitutes, whether keepers of houses or pimps who live with them and on their earnings, have found it more profitable to work their slaves to the utmost and to discard them for new and fresh material when they are completely spent.

One of my first activities when I became an assistant in the office of the district attorney ten years ago was the institution of a prosecution of two men who had inveigled two young

girls into a house of prostitution. As I remember, the girls were about sixteen years of age. They had been kept prisoners in the houses for about three weeks before they were rescued. The tales they told as to the excesses to which they had been subjected were to me unimaginable; and if I had not had them confirmed many times since by the experiences of others, I should have difficulty in believing them to this day. It was almost inconceivable to me that, even apart from the ravages of disease, such excesses should not have led almost immediately to insanity, and both girls were infected with disease to an extent that made it necessary for a complete operation to be performed. These, I have since learned, were typical cases—typical of the methods of the keepers of such resorts—and probably if the business was to be carried on at the prevailing rates, fifty cents or a dollar being the charge to the customer, such practises were necessary, since it would have been impossible to pay the remuneration to the “cadet” and the blackmail to the police and still pay the rent for the space necessary to accomodate a larger number of inmates and work them less hard, especially at the exorbitant rates which are exacted by the property owners when they rent to prostitutes. Hence, the necessities of the business required a constant renewal of the supply of raw material and a constant alliance with the “cadet” who furnished the supply. Moreover, it required the practical imprisonment of the unfortunate victim; since if escape were possible no human being would have submitted to the excesses and abuse which this life entailed. This business of ruining girls and keeping them in durance could not be carried on without the active connivance and participation of the police.

If the police had desired to stop the traffic,—even though permitting the houses themselves to run—it would have been the simplest matter in the world. As a matter of fact, they had but to give the word and it would have stopped. But even assuming some real police activity to have been necessary, it would have been necessary only for them to have made it clear that their sympathies were enlisted against the traffic, and to have made an occasional inspection of the house so that any inmate of such a house might know that to gain assistance and

relief she had only to make an outcry when a policeman was passing, or to appeal to him when he visited the house, and it would have been impossible to detain any inmate for twenty-four hours. The trade was and is possible only if the underworld understands that the police are in alliance with the law-breakers and will not interfere. If the attitude of the police were different, the business of the "cadet" would cease or at all events would be reduced to a minimum, for with active police interference which would prevent imprisonment of the victim and would seek earnestly to discover and to punish the criminal, the price payable to the pimp would be too low and the risks too great to make the trade a popular one. It might be going too far to claim that the traffic could be entirely suppressed, but I believe it would not be going too far to say that it could be reduced to a negligible minimum—if such a phrase can be applied to such a subject.

Now, why this attitude on the part of the police? First, because the call of the pocket-book was against interference—for how could their partners thrive if supplies were cut off? Second, because the "cadets" were often under the protection of people of importance who had an interest in the traffic, and might become people of importance themselves. Third, because the police officer who has allowed a house of prostitution to run for a number of years or months, when everybody knows he could have closed it and has been sharing in the profits, may be subjected to serious embarrassment if any great publicity be given to the fact that such horrors are being enacted in it.

The only possible conclusion, therefore, is that the police connive at this traffic as they connive at the rest. Nor does the conclusion result solely from deductive reasoning. Direct evidence of police connivance is of course rare, but there is in the records of the Lexow Committee a pitiable tale of an attempt by a woman, herself the keeper of a house of prostitution, to rescue her niece, whom she had sought to keep pure, from another house into which she had been lured, of her fruitless pleadings with the police, and her offers of money for their assistance, and of the revilings, insults and threats with which she was repulsed by them.



And the chasm of years between the Lexow Committee and the present day is bridged by one of the incidents published by the Committee of Fourteen in its report of last year. The story is short, and I offer it in full:

One afternoon a little girl who worked in a corset factory in Bridgeport, Conn., went for an outing to a nearby pleasure resort where she met a notorious "cadet" from New York City. This man persuaded the ignorant girl to go aboard a boat at the dock for something to eat. Before she was aware of the fact, the boat had started for New York. On reaching the city the "cadet" took her to a disorderly house, where she was finally starved into submission. The house was a popular one, and she and the other girls sometimes received as many as twenty men in one evening. The girls were given a brass check for each man, which represented her share of the proceeds. While she was in this house she was compelled to give all her checks to the "cadet" who brought her there, he, in turn, cashing them and keeping the money. Finally she escaped and appealed to a policeman for aid, but he assaulted her instead. In despair, she went to a saloon, and a bartender took her under his protection, and she solicited for him on the street.

I believe that this is a typical occurrence.

One result the bawdy-house law, with the occasional spasmodic attempts at enforcement, inevitably produces. It has diminished the number of organized houses of prostitution, that is, of houses where vice is practised in its least attractive and least harmful form, and has increased the number of prostitutes plying their trade singly or in small groups in the apartments and tenements, and at times the number of those who walk the streets and support Raines-law hotels and other houses of assignation, and has thus emphasized the evil in its most noxious form.

A reason for this change is not far to seek. It is a comparatively easy thing to secure evidence sufficient to prosecute the keeper of an ordinary house of prostitution, and a precinct commander finds it difficult to explain the persistence of such a house in opposition to his will. In the spasm of civic virtue that ran its course during the years 1901 to 1903, or thereabouts, one police captain was convicted in a criminal court,



and, if I remember rightly, several others were dismissed from the force for allowing the ordinary houses of prostitution to run unmolested in their precincts. Since that time there has been a succession of police commissioners more or less addicted to the fad of reform who were suspected of a desire to get rid of a number of the precinct commanders for what, if I may employ a much-abused police phrase, might be termed "the good of the service." For a police commissioner to convict a captain of neglect of duty where he failed to "detect and suppress" an ordinary bawdy house, was comparatively easy. To find sufficient evidence to convict him where the same amount of prostitution was scattered through the tenements and massage parlors and on the streets, was much more difficult. Moreover, in such a disorganized condition of the department, with a reform head and an unregenerate neck, body and tail, protection was no longer sure to protect—at all events, to protect from annoyance—if the business was carried on in a manner that rendered it easy for anybody to get evidence upon which to base a prosecution. Therefore, the more noxious form of the offense became safer—both for the practitioner and for the captain.

Hence, the results of our repressive statute upon prostitution apart from the effect upon the police and the community at large have been: (1) that we have prostitution in its more objectionable rather than in its less objectionable forms; (2) that we have the horrors of the white-slave traffic unchecked by the activity which is legitimately to be demanded and expected of the police.

It may be asked with pertinence, how all this is to be attributed to this particular repressive law, and how conditions would be altered if we had not that law. I think the answer will be clear if we will but marshal our facts, examine them in the light of experience and apply our reasoning powers to them unhampered by our prejudices.

It is admitted, I believe, by all who have given thought to the subject that the least harmful form in which prostitution appears is in the organized house, and that, if we must have it at all, it is better that we should have it in that form. The average man cannot conceive of a condition of society in which

we shall not have it at all; he believes that if we do not have professional prostitution we shall have widespread sexual promiscuity, and he thinks that the honor of his sister and his daughter is safer by reason of the dishonor of the prostitute. He not only does not desire that prostitution should be suppressed; he desires that it should not be. But there are certain manifestations of it that he would gladly be rid of. He does not approve of the conduct of prostitution in the tenements where the children of the poor can find no escape from its contamination; he does not approve of prostitution when it stalks the streets and makes it impossible for his wife, his sister or his daughter to be out unattended at night without the risk of insult; and above all he does not believe in the "cadet" and the white-slave traffic, and he would readily consent to flay alive or boil in oil those whom he found participating in or conniving at that traffic. But he is very much at a loss what to do about it. Being a sane, practical, and on the whole humane person, he can see no advantage in driving the prostitutes out of the tenements and off the streets if they are immediately to be driven on the streets and into the tenements again from the only place in which they can take refuge, namely, the houses of prostitution. Hence, he takes comparatively little interest in cleaning up the streets, and practically none in cleaning out the tenements.

He would like very much to put an end to the white-slave traffic and the "cadet" system and he is much aroused whenever these disagreeable matters are called to his attention. But he realizes that he is powerless to do anything in this direction, and while he knows that there is something wrong with the police, he does not know exactly what the matter is. So, after electing a new mayor who will appoint a new police commissioner who will, it is hoped, by some process of legerdemain put an end to all this, he wraps himself in his accustomed cheerful optimism and forgets all about it.

Give him, however, some system of law whereby the prostitute may be permitted to live at peace and in order in a house of prostitution—some such system of toleration and moral regulation as was recommended by the Committee of Fifteen

some ten years ago—and I think it safe to predict that that same average person will be found insisting with considerable emphasis that she shall remain there, and that the police shall keep her off the streets and out of the tenements.

Nor will it be found a matter of much difficulty to accomplish this result. In the first place, many of the prostitutes would naturally gravitate to these houses. They are on the streets to-day, because they have no other way of plying their vocation. Those who would not voluntarily abjure the streets would speedily be driven off. It is a well-known fact that street-walking diminishes when there is in a night court a magistrate who makes it a practise to convict and imprison. Under the present system many magistrates are loth to do this, because they, too, are impressed with the absurdity and inhumanity of the system whereby the prostitutes are driven to the streets and then imprisoned for being there. Under a system which permitted them to live in their houses, there would be no longer any inhumanity in punishing those who insisted on walking the streets, and all the magistrates might be expected to work to that end.

The same principles would apply to prostitution in the tenements. A woman who could open a house of prostitution in a private house, without fear of interference from the police and with no necessity of paying blackmail to them, or to a landlord or janitor, or to neighbors, would be little apt to conduct such a place in a tenement, especially if she realized that it would be no very difficult matter for her neighbors to secure evidence against her and that upon conviction she could no longer hope to escape with a fine, but must expect imprisonment as a certain consequence.

The disappearance of the street-walker would mean practically the extermination of the Raines-law hotel and other houses of assignation, since, if the street-walker were eliminated, the greater part of the demand for such accommodations would be ended. And this would be especially true if the law as to Sunday opening of saloons were amended so that there would no longer be any reason for a decent saloon to seek a hotel license.

Moreover, police blackmail would be virtually at an end.

Blackmail is paid for immunity from legal interference. If the police had no right to interfere, except in case of disorder, there would be no incentive to pay it and no possibility of compelling its payment; and this could be assured if, as the Committee of Fifteen advised, such supervision as it might be deemed necessary to preserve were placed exclusively in the hands of a special body of morals police, and the general body of the force were restricted to their duty of preserving outward order and were forbidden to interfere within the houses except when crimes were committed therein. Moreover, with the opportunities for blackmail practically eliminated there is no reason to believe that the earnest coöperation of the police in the enforcement of the laws could not be anticipated. If the police are inherently no better than the average of the community, there is no reason to believe that they are any worse, and if the community will only relieve them of the enormous, ever-present, and almost compelling temptation to evil, there is every reason to believe that they will perform efficiently and cheerfully any duty that is assigned to them.

And this is especially true with regard to all that pertains to the white-slave traffic. Render it safe as well as praiseworthy for the patrolman to interfere with these activities—I mean safe from the departmental point of view—and I conceive it reasonable to predict that we may expect to see a speedy end of the pimp and the “cadet.” The former’s activities cease when there are no longer any street-walkers to be protected by them and to support them; the latter can thrive only in connection with the imprisonment of the prostitute, which would be impossible under a system of inspection by a special morals police.

It might reasonably be expected that such a system would also reduce the total volume of prostitution by reducing the demand for it. The bawdy house offers the vice in its least attractive form, and its patrons go there of malice aforethought and in cold blood. The street-walker offers the seduction of an adventure, a sordid adventure to be sure, but yet one that to a large number who could not be induced either for esthetic or prudential reasons to enter a house of prostitution, makes an appeal. Moreover, she stimulates a demand by

presenting the temptation to those who oftentimes, if unmolested, would feel no promptings of desire. The woman in the saloon offers some of the same elements of attraction, and she avails herself also of the stimulating effects of alcohol. The Raines-law hotel or the house of assignation to which women of this stamp take their patrons offers, through its comparative privacy, an approximate immunity from detection to those who prefer that their indulgences shall remain unknown.

This reduction in the demand would tend normally to reduce the number of the women who would be drawn into professional prostitution. It might be expected to reduce the number of professional prostitutes in another way. With the elimination of the slave prostitute and the life of constant debauch which the street-walker must live, the life of the individual prostitute would be prolonged and it is to be expected that the demand for new recruits would become correspondingly diminished.

The great reduction in number and the undisguised character of the houses of assignation which must result from the amendment of the liquor law and the elimination of the professional street-walker, would also have a natural tendency to reduce the number of occasional prostitutes. Many women who yield either to the temptation of physical desire or to the demand for additional income would not be tempted unless the road were easy and secure.

Finally, it might be expected to facilitate the work of the moral teacher and the prophylaxist, who are laboring for ultimate suppression. The spectacle presented by the bawdy house—of women paraded as mere beasts to be selected for the purposes of momentary gratification—makes a revolting picture of human degradation which will render susceptible to the moral appeal any whom that appeal can ever reach, and many who could not be persuaded that there was anything essentially vicious in the indulgence that followed and grew out of the tawdry romance of even the most sordid flirtation. The popular misconception that there is relatively less chance of venereal disease from intercourse with the apparently occasional prostitute leads many men to run the risk with women of the streets, while the same men would be deterred by the warnings of the



prophylaxist from jeopardizing, by the risk of infection in a bawdy house, their future happiness and the happiness and health of the women they have married or hope to marry.

Moreover, it would tend to secure the moral reformer and the prophylaxist a hearing, when to-day few will give them ear. Give the community what it wants, and you may hope to convince it that it does not want it after all. Try to refuse it what it wants, and it immediately and insistently demands upon what food you have been fed that you are grown so great as to presume to dictate to it. To-day the average person classes all those who oppose the practise of prostitution in the one category of "unpractical reformers" and looks with distrust and hostility upon the silly people who want to "change human nature" by legal fiat and who hope to suppress by law practises that "offer the natural outlet to a normal instinct" which has sought and found its gratification in this manner since the world began. He insists that the reformer's activities in the past have resulted in nothing save the driving of the prostitutes out of the houses where they belong to the streets and tenements where they have no business to be, and that the "reformer" himself is an ignorant meddler without knowledge or judgment, else he would be about some better business. Hence the "practical man" will not listen to the preacher and tends to pay scant attention to the prophylaxist.

But let the reformer once make it clear that he is not unpractical, that he realizes the strength of the forces that have made the prostitute an element in society almost since society began, that he is not seeking to dam a torrent that no dam has ever been able to restrain, that his purpose is merely to direct the flow so that it shall not inundate the community, and if possible to dry it up at its sources, and he may expect to receive a respectful, even if at the outset a somewhat skeptical hearing from those who today simply scoff and revile. And if he gets a hearing, with the mass and force of the facts behind him, he is bound in the end to prevail.

And thus by the abandonment of the fight for the useless statute it may be possible to arrive the sooner at complete repression through the only means which can ever be effective to



that end—namely, through the education of the men of the community to a genuine comprehension of the magnitude of the evil and to a realization of the suffering and disease for which they are responsible.

In all this there is nothing that is new. It has been said over and over again in different, and often in far better forms, by those who spoke with greater authority. My only excuse for repeating it is my belief that a direct appeal should again be made to the good people who, through their insistence on the letter of their ideal, are letting its spirit languish if not perish.

I believe that they should be besought to look to themselves and to ask themselves whether they, too, are not blameworthy in their ignorance, and whether, while they are seeking to educate the licentious man to a realization of the price that is paid in human misery and shame, in sickness and disease, in death and deformity, for the sensuous gratification which is his sole return, they should not ask themselves whether the moral deformities and physical ills of the community, the demoralization of its officials and servants, the rape, imprisonment and suffering of its young women, the delay of the time when the whole wretched death and disease-dealing plague may finally be eliminated, is not far too high a price to pay for the retention of a lifeless word upon the statute book.

Moreover, I would say to them that they may not take comfort in the thought that they stand for an ideal which admits of no compromise. I stand for the same ideal, and there is no thought that the fight for its accomplishment shall be relinquished. The question is solely of the means, whether through the sword of the law, which has been found futile against the armor of the opposing host, or through that appeal to the mind and heart, that preaching of the gospel of reason and humanity which alone promises a prospect of conversion and reform. And surely it is unnecessary to say to a Christian community that there are other means of enforcing a gospel than by the sword.

## RESPONSIBILITY FOR CRIME BY CORPORATIONS<sup>1</sup>

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**Q**UESTIONS relating to the legal regulation and control of the aggregations of men and money which we call corporations constitute one of the most serious problems now confronting the American people. To one sub-division of this problem I desire to direct your attention for a few minutes to-day—to the question in what manner the machinery of the criminal law should be used by the state in regulating the conduct of corporations.

Although this question is of unusual importance in modern times and in a country which either is or thinks itself trust-ridden, yet the problem as a whole is neither new nor American. Every law student has smiled at Coke's quaint dictum that corporations cannot be excommunicated because they have no souls; but few realize that Coke was merely stating the substance of an actual adjudication of Pope Innocent IV—his decision, as the court of last resort, upon what in his day was a very practical question, as to the application of the penal law of the church to the corporations of the thirteenth century. From time to time from that day to this, the criminal liability of corporations has been debated on the continent of Europe with a philosophical thoroughness unknown in this country.

The history and present status of the criminal liability of corporations in English-speaking countries may be briefly summarized. In 1613, Coke declared that a corporation could not commit treason.<sup>2</sup> In 1691, Lord Holt stated broadly that a corporation is not indictable, although the particular members

<sup>1</sup> Read at the Conference on the Reform of the Criminal Law and Procedure, May 13, 1911.

<sup>2</sup> Sutton's Hospital Case, 10 Coke 32b. In *V. B.* 21 Ed. IV, folio 13, it was said that corporators as such could not commit treason or felony. To the same effect is *Vin. Abr.*, tit. "Corporation," Z.

of it are.<sup>1</sup> In 1758, Blackstone, citing as his only authority Coke's dictum above referred to, declared that "a corporation cannot commit treason or felony or other crime in its corporate capacity; though its individual members may, in their distinct individual capacities."<sup>2</sup> Kyd in 1793 questioned the generality of some of the earlier dicta, but admitted that indictments for felonies or higher misdemeanors would not lie against a corporation.<sup>3</sup> Nevertheless, municipal corporations and quasi-corporations had been convicted and punished for failure to discharge a duty of repairing a highway or the like.<sup>4</sup> In 1842, the Court of Queen's Bench upheld an indictment against a railway company for failure to perform a specific duty imposed by statute;<sup>5</sup> and four years later the same court entered sentence against a similar corporation for misfeasance in maintaining a public nuisance,<sup>6</sup> although the court admitted that corporations could not commit treason, felony, perjury, offenses against the person, or any acts which derive their criminal character from the corrupted mind of the person committing them or which are violations of the social duties belonging to men and citizens. Recently, in America, corporations have been convicted of statutory crimes involving a particular intent,<sup>7</sup> and of criminal conspiracy,<sup>8</sup> while a majority of the Supreme Court of Canada seem to have thought that a corporation might be guilty of manslaughter.<sup>9</sup> Indeed, the authorities both in England and America seem tending mainly toward the view that there are no crimes—not even felonies involving a particular

<sup>1</sup> 12 Mod. 559.

<sup>2</sup> 1 Black. Comm., 476.

<sup>3</sup> 1 Kyd on Corporations, 225-226.

<sup>4</sup> Rex v. Inhabitantes Civitates Norwici (5 Geo. 1), 1 Stra. 177; Rex v. Inhabitants of West Riding of Yorkshire (1802), 2 East 342; Rex v. Mayor, etc., of Stratford-upon-Avon (1811), 14 East 348; Rex v. Inhabitants of the Hundred of Oswestry (1817), 6 M. & S. 361.

<sup>5</sup> Regina v. Birmingham, etc., Ry. Co., 3 Q. B. 223.

<sup>6</sup> Regina v. Great North of England Ry. Co., 9 Q. B. 315.

<sup>7</sup> United States v. John Kelso Co., 86 Fed. 304; State v. Rowland Lumber Co., 69 S. E. 58 (N. Car.).

<sup>8</sup> United States v. MacAndrews & Forbes Co., 149 Fed. 823; State v. Eastern Coal Co., 70 Atl. 1, 6-7 (R. I.).

<sup>9</sup> Union Colliery Co. v. Regina, 31 Canada Sup. Ct. 81.

intent—that are legally impossible of commission by corporations, although, of course, in cases where the only punishment is imprisonment, sentence cannot be imposed or executed upon a corporation.

I am to discuss, however, not so much what is, as what ought to be, the law of this subject. How far, then, ought punishment for criminal offenses to be visited upon corporations, and how far ought the penalties to be inflicted not upon the corporation but upon the individual officers or agents who act on its behalf? The objections to enforcing criminal penalties against a corporation are two: (1) that crime, save in a few exceptional cases, involves a corrupt mind, a *mens rea*, and that a corporation, having no mind, is incapable of possessing any such mental state, so that to visit a penalty upon the corporation would be to punish for an imaginary crime—a course abhorrent to justice; (2) that to punish a corporation would be unjust because the innocent members would suffer equally with the guilty.

So long as the criminal liability of corporations is confined to such crimes as nuisance, for which an individual master would be responsible if the act were committed by his servant without any fault on the master's part, the former objection is of little or no force; but when a corporation is accused of a crime which involves a wicked mind on the ground that the crime has been committed by the corporation in person, the objection becomes more formidable. Has a corporation a mind? Can it entertain a particular criminal intent? Can it act in person? The answer to these questions will depend in some measure upon our conception of the nature of a corporation.

The orthodox view has been that a corporation is a fictitious body, existing only in contemplation of law, without mind and without soul. But the dominant school of jurists in Germany, and probably also in other countries of continental Europe, now deny the truth of this conception. Led by Dr. Gierke of Berlin, they assert that a corporation is a real person, recognized but not created by the law. It is a *Gesamtperson*, a group-person. It possesses a real mind and a real will. It is as capable as a natural person of entertaining malice or a criminal

intent. When a corporation acts by an officer, it is not acting by an agent but by an "organ," just as an individual's hand is not his agent but is a part of the man himself. This is the reality theory of the nature of corporations.

If this theory, towards some form of which even Anglo-American jurisprudence seems upon the whole to be tending, is correct, then the objection that a corporation ought not to be punished for a crime involving a mental state because natural justice prohibits crime by fiction, falls to the ground.

The second objection—that to punish a corporation for crime is to punish the innocent members equally with the guilty—remains for consideration. On this proposition Abraham based his argument on behalf of the Corporation of Sodom. "Wilt thou also destroy the righteous with the innocent?" said he; "Shall not the Judge of all the earth do right?"

Nevertheless, according to the reality theory of corporations, Abraham was altogether in error. Every organized body of men is a real person. Its acts and its intentions are its own and not another's. When you punish a corporation for a criminal act, you are punishing the very criminal itself. No one is punished for another's fault. To be sure, the members may be injuriously affected. But so too when an individual criminal is imprisoned or put to death, his wife and his children may suffer, and yet we do not feel that the law is punishing the innocent with the guilty. The penalty is visited upon the real culprit and upon him alone, although incidentally innocent third persons may sustain loss. The case is precisely the same, according to the reality theory, when punishment for crime is inflicted on a corporation. The real criminal is the juristic person, the group-person. Upon that person, the law lays its hand. The shareholders are in fact as well as in law different persons. The law can no more stay its hand against the real wrongdoer, the corporation, because many of the shareholders

<sup>1</sup> As late as 1841, the Supreme Judicial Court of Maine made this objection the basis of a decision that a corporation could not be indicted for maintaining a public nuisance in the erection of a dam across a river. *State v. Great Works Milling, etc., Co.*, 20 Me. 41. Said the court: "If indictable as a corporation for an offense \* \* the innocent dissenting minority become equally amenable to punishment with the guilty majority."



may be innocent, than it can refuse to imprison a husband for larceny, because the loss of his support may cause his innocent wife and children to starve.

Advocates of this theory of corporate existence pride themselves upon the justification which their theory thus affords for the subjection of corporations to the rigors of the penal law. The old theory—the fiction theory—of corporate existence admitted only doubtfully and apologetically the liability of corporations for crime. The new theory, the reality theory, finds such liability natural and just. Indeed, an English writer suggests with much plausibility that “if the realism-theory (with its insistence on ‘group-will’ and ‘group-action’) had not offered a firm foundation for attempts to visit corporations with legal punishment, realism would not have been adopted and developed so readily by French and German writers.”<sup>1</sup>

While some of the positive features of the reality theory fail to commend themselves to the sober Anglo-Saxon mind, yet its denial of the ancient dogma that a corporation is a creature of the state, existing only in contemplation of law, dependent for its breadth of life upon the fiat of the sovereign, ought to command universal assent: and this emancipation of corporations from that creed out-worn—a creed which would subject them to the same governmental tyranny to which the doctrine of the divine right of kings would have subjected the individual—should more than compensate for the supposedly solid basis which the reality theory furnishes for corporate responsibility for crime.

But what is the explanation of the popular and judicial inclination to subject corporations to criminal liability—an inclination which is so strong as to be a potent factor in the overthrow of the time-honored theory of the nature of corporations? Why should there be this widespread desire to inflict punishment upon the corporation rather than upon the guilty individuals? The answer is nigh at hand—greater ease of proof and certainty of conviction. To adduce sufficient evidence to bring home to particular individuals responsibility for the

<sup>1</sup> Carr, *Law of Corporations*, 198-199.



wrongful acts of corporations is beyond the power of the average state's attorney, not to speak of abler lawyers. Who can search the heart of a corporation? Its ways are past finding out. To prove that a certain act was performed by the corporation is comparatively easy. Without much difficulty you may discover a subordinate employe who performed the physical act in question, but he is generally comparatively obscure and often of little or no financial responsibility. As he acted under orders from his superiors, he is usually comparatively innocent of any moral fault; and even if his legal guilt is established, a jury will be loth to convict. If you attempt to reach the men higher up, almost insurmountable difficulties arise on every hand. The directors will disclaim responsibility—they supposed the executive committee had entire charge of the transaction. The members of the executive committee knew nothing about the matter—they supposed the president attended to such affairs. The president, however, when interrogated, shows that this impression of the executive committee is quite erroneous, as he had no connection with the transaction; or perhaps he will plead his constitutional privilege against self-incrimination. Under such circumstances, is there any wonder that any theory which will permit of punishment being inflicted upon the corporation itself, without any attempt to trace the responsibility to any particular officer or member, should be welcomed as a precious boon to the public?

But latterly a reaction has set in. The infliction of fines upon corporations is thought in some quarters to be a crude and ineffective measure. The innocent suffer and the guilty go free, or comparatively free. The managers of corporations are not, it is argued, deterred from wrongdoing by the possibility of a fine to be imposed upon the corporation—a fine of which their own share, however spectacularly large the whole may be, is almost infinitesimal. Have done with such rough-and-ready measures, is the demand. Cease to fine the innocent shareholders, and imprison the ringleaders in corporate wrongdoing. From Nebraska to Oyster Bay, the cry has gone forth, "A millionaire behind the bars! A trust magnate in stripes!" The scholarly chief executive of New Jersey has given wide

publicity to this popular demand in the shape of the epigram: "Guilt is personal."

He is right. Guilt is personal. It is individual. The philosophic discussions of German jurists will never bring the matter-of-fact Anglo-Saxon to deny this proposition—though he may, and I hope will, be convinced that corporations are not, any more than partnerships, created by the state. The simple, easy method of fining a corporation is neither so just nor so effective as the plan of imprisoning the guilty officers. The problem of the legislator is to balance the certainty of punishment which is attainable by the one method against the more exact justice and greater effectiveness of the penalty which is attainable by punishing the guilty individuals when conviction can be secured.

The problem, therefore, is essentially a practical one. I do not use the word "practical" in the sense indicated by a distinguished lawyer whom Maryland borrowed from Ohio, who defined a "practical" man as one who believes that three times nine is about twenty-seven—that it may go as high as twenty-nine, and in bad years sometimes falls as low as twenty-six. I do not use the word as exclusive of exact thinking; but rather as indicating that this question must be decided by utilitarian considerations. The question is whether, in the long run and all things considered, the ends of justice and the enforcement of the laws will be better promoted by the simpler course of imposing the penalty on the corporation, or by the course of punishing the guilty individuals—a course which, although it is more accurate, more just in theory, and, if it were capable of general enforcement would be more efficient, is yet by reason of the difficulty of enforcement often impossible to carry out; and this question is peculiarly a practical rather than a theoretical one.

The suggestion will naturally be made that a liability should properly be imposed both on the corporation and on the individuals, leaving to the administrative and executive officers of the state a discretion to enforce the penalty against the guilty individuals when sufficient evidence can be obtained, and in other cases to collect a fine from the corporation. But nevertheless to repose such power in any official is repellent to all who

adhere to the old-fashioned doctrine that ours should be a government of laws and not of men; and to permit of punishing both the corporation as a whole and its guilty members is to allow double punishment for the same crime.

I have said that the question whether the corporation or the guilty officers should be haled to the bar of justice is a practical question. So it is, or ought to be; but the risk of interference by the courts with your practical measures, on the ground that they amount to a deprivation of property without due process of law, is ever-present. We must, therefore, be prepared to defend our practical determinations by theoretical reasoning.

For instance, take the real or supposed injustice of punishing the innocent members of a corporation together with the guilty by imposing a fine upon the corporate entity. I am not aware that the constitutionality of legislation having that effect has ever been challenged: but at any moment some desperate advocate may raise the objection, and some willing court accede thereto. If the point be raised, the advocates of such laws must needs be prepared to defend their handiwork, either by the reality theory of corporate personality, or in some other way.

Every true disciple of the common law instinctively revolts against this necessity for justifying the law on philosophic grounds. Trained in the doctrine of *stare decisis*, accustomed to accept the correctness of a judicial decision once pronounced as a premise in all future reasoning, with what fine scorn we contemplate criticism of a decision of a court of last resort because the ruling will not square with sound legal philosophy. A critic who indulges in such useless talk is an irreverent doctrinaire. He would, like Jeffrey, speak disrespectfully of the equator. Away with such a fellow from the earth! Our statute law also develops without much conscious reference to any philosophy of jurisprudence. Our legislatures grope after truth. Feeling, rather than perceiving with the mind, the necessity for a change in the law, they straightway apply a remedy selected by instinct rather than by reason. We have not, as the continentals have, a trained body of jurists to whose philosophic scrutiny proposed laws are submitted.

Much may be said in favor of this haphazard Anglo-Ameri-

can way of letting justice slowly broaden down from precedent to precedent, and of correcting particular evils by experimental legislation. But an essential part of this system, or lack of system, consists in the possibility of applying corrective legislation immediately, whenever a rule, established by judicial decision, is found inconvenient in practise. Consequently, the system works least satisfactorily in respect to constitutional law, where erroneous decisions cannot be corrected by legislation. The courts themselves acknowledge as much when they admit that judicial precedents are entitled to less weight on constitutional questions than in other departments of the law. This should be especially true where the question of constitutionality is in substance legislative—as to the justice or fairness of the statute. For, disavow it as they may, the courts in determining whether a statute accords with the interpretation which they now place upon the constitutional guaranty of due process of law are passing upon the legislative question of the reasonableness or propriety of the measure. For instance, when in *Lochner v. New York*,<sup>1</sup> the Supreme Court of the United States held the New York bakery law unconstitutional, they did so because a majority of the judges differed with a majority of the legislators as to the reasonableness of the regulation.

If such questions of reasonableness are to be decided by the courts, it is incumbent upon our judges to emulate the continental jurists in becoming students of the philosophy of jurisprudence. The high realms into which our erstwhile practical judges are to be carried by the “new constitutional law”—for such in effect it is—may be inferred from the fact that Mr. Justice Holmes in a dissenting opinion has recently been called upon to protest that “the fourteenth amendment does not enact Mr. Herbert Spencer’s *Social Statics*.”<sup>2</sup>

In these days, when we constantly encounter such decisions as that recently pronounced in which the New York Workmen’s Compensation Act was held unconstitutional, a body such as this, deliberating over the reform of the law, must hold its sessions in fear and trembling. Your most carefully drafted measures of reform are liable to be frustrated before they can

<sup>1</sup> 198 U. S. 45.

<sup>2</sup> *Ibid.* 75.

be tried. Many lawyers, including myself, have denounced in no measured terms President Roosevelt's criticism of what he was pleased to call reactionary decisions of fossilized judges; and we would not retract one word of remonstrance against such criticism of the courts. In the first place, the critic, not being a lawyer, was incompetent to speak on a legal subject. Secondly, not even a lawyer should permit himself to criticize the decisions of the courts as part of a political argument. Lincoln may have done it; but if so, Lincoln was wrong. Mr. Bryan certainly did it; but Mr. Bryan was also wrong.

But although we maintain the absolute immunity of the courts from criticism in course of political argument, we insist no less strongly upon the right of assemblies such as this to protest—respectfully, earnestly, vigorously—against decisions which we believe to be based on false premises or fallacious reasoning, and therefore to be pernicious as precedents. Such I take to be some at least of the decisions to which President Roosevelt objected—especially those which give to the fourteenth amendment, and other similar constitutional provisions, an interpretation which renders fruitless many deliberations of such bodies as this.

What I plead for is no stretching of the meaning of the constitution in order to fit changed conditions. It is no new interpretation of the constitution for which we entreat. It is the old meaning we thirst for. Back, back, to the meaning of the fathers, and away with the modern glosses and extensions. Hark back to Curtis's opinion in *Murray v. Hoboken Land Company*; <sup>1</sup> hark back to Miller's opinion in the *Slaughter House Cases*, <sup>2</sup> and you will never find either the fourteenth amendment or any other guaranty of due process of law an obstacle to your reforms. It is the new interpretation—the interpretation which converts the judiciary into an appellate legislature—it is that interpretation which is a menace to democracy, which explains while it can never justify the demand for such measures as the popular recall of judges, and which furnishes the reason for such discussions as the present one.

<sup>1</sup> 18 Howard 600.

<sup>2</sup> 16 Wallace 36.



## THE ETHICS OF PUNISHMENT<sup>1</sup>

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**I**N connection with criminal jurisprudence, the new sciences of criminal anthropology and criminal sociology of late years have been studied with no little advantage, while the subject of criminal ethics has not received the same pointed attention. And yet ethical problems of the first magnitude arise the instant we reflect on crime and the treatment appropriate to it. We cannot even pronounce the word "crime" without being challenged to attempt ethical discrimination, without being compelled to clear our minds as to certain fundamental concepts which are joint stock of ethics and jurisprudence.

What is crime, as distinguished from sin, on the one hand, and from the harmful act of a brute creature—the vicious bite of a horse, for instance—on the other, or the injuries inflicted by the operations of inanimate nature?

(A stone loosened from an overhanging rock falls upon the head of a passer-by and kills him. Here is injury without intention. A vicious horse bites its rider. Here is injury accompanied by intention. What is the difference between such an occurrence and such an action and a crime?)

Is a crime merely a noxious act like the sting of a poisonous insect, or a foul act like the disgusting behavior of monkeys? Or does the notion of crime involve guilt in the perpetrator of it, and if so is it possible, apart from theological and metaphysical discussions to which there is no end and in which there is no agreement, to define the term "guilt" in such a way as to fit it for practical use by a science like criminal jurisprudence? To

<sup>1</sup> Read at the Conference on the Reform of the Criminal Law and Procedure, May 13, 1911.



do this, is the office of criminal ethics. The proper function of this department of research, as I take it, is to furnish to criminal jurisprudence a concept of guilt which it can use in the definition and the treatment of crime, and to avoid, in so doing, entangling alliances or controversies with theology and metaphysics. Or the matter may be put in this wise, that the function of criminal ethics is to discover some basic fact in human nature which, as a fact, can be accepted—nay, which when once pointed out must be accepted as a fact without its being the province of the student of criminal law or of the legislator to account for the fact or to trace it to its ultimate origins. The interpretation of the fundamental fact, the attempt to explain and connect it with other facts of human nature, to give it its meaning in the whole of human experience, is to be left to the philosopher or the scientist. In respect to the explanation or interpretation there is room for difference: in respect to the fact it ought to be possible to obtain agreement.

Criminal anthropology is concerned chiefly with one class of offenders—the irresponsibles, the incorrigibles. Criminal sociology is concerned chiefly with the prevention of crime by uncovering the social factors—such as extreme poverty and its economic causes, intemperance and the like—that furnish occasion and press upon weaker wills the temptation to perpetrate crime. Criminal ethics is concerned with the punishment of crime. These are rough distinctions. At their borders, the different provinces tend to shade off into one another, but the distinctions will serve to set into relief the principal thought, that criminal ethics should be marked off as a distinct branch having its own distinct contribution to furnish, not to be replaced by the results attained in either the anthropological or the sociological field.

I pass on now to speak of the specific subject of this paper, that of punishment. In the concluding passage of his chapter on the Purpose of Criminal Punishment, the author of a recent textbook, (*Outlines of Criminal Law*, by Kenny) remarks: "It cannot, however, be said that the theories of criminal punishment current among either our judges or our legislators have

assumed even at the present day a coherent or even a stable form."

This is eminently true, and anything better could not be expected so long as the conceptions of crime remain as incoherent and unstable as they actually are. For the theory of punishment depends on the conception of crime. The object of punishment is the defense of society, or social self-preservation, say some. The object of punishment is to readjust the socially adaptable and to segregate the inadaptible. The object of punishment is deterrence. One of the objects of punishment, according to a brilliant writer of the reactionary school, is to gratify the vindictive feeling of the injured or of his kinsmen. "Criminal procedure is to resentment what marriage is to the affections,—the legal provision for an inevitable impulse of human nature,"—a statement which may leave one in doubt whether the view entertained of marriage or of criminal procedure is the less attractive.

One of the objects of punishment, says another eminent authority, is to establish an abstract equilibrium between wrong and pain, to inflict pain proportionately to wrong, even if no benefit result to the wrongdoer or to others from the pain.

The object of punishment, say others, is reformation. But the word "reformation," again, is used in different senses, correspondingly to primary divergences of opinion as to crime and its implications.

Without enlarging further upon these and other differences that might be mentioned, I shall submit my own conclusions, not attempting to do more than indicate briefly the grounds on which they are held.

The object of punishment is reformation in a specific sense, presently to be explained. I deem it unnecessary to add to reformation any of the other aims that have been proposed, because, in so far as they are justifiable they are included within reformation, rightly understood. The defense of society is included when we set up reformation as the proper aim, for there can be no better method of defending society

against the criminal than so to make him over that he shall cease to be a criminal. The deterrence of those who are not criminals, but may be conceived to be in danger of becoming such, is best accomplished by the stern condemnation of wrongdoing which, as we shall show, is an integral part of the process of reformation. All the other right ends of punishment are contained within reformation. All the rest without this one are pointless and ethically unwarranted.

But in order to present the specific sense in which the term "reformation" is employed, it is necessary to define the concept "crime" as here understood. The salient feature of the definition proposed is that the criminal is a moral being, and cannot lose his moral character, no matter what the enormity of the deed he has perpetrated, and hence that the punishment, no matter how severe it may be, must be such as to show respect to his moral character. Hence it follows that exemplary punishments are excluded, if by "exemplary" is meant a punishment greater than the condemned person deserves, the magnitude of which is raised so as to produce an effect upon others. A punishment may, indeed, be both exemplary in the literal sense, and deserved. For instance, when crime of a certain kind is on the increase in a community and it becomes necessary for the authorities to give warning that vigilance will be used to stem the tide, then, one person having been detected, while numerous others remain unknown, the punishment pronounced upon this one offender may be exemplary in an unobjectionable sense. For it is not in excess of what he has deserved,—he has deserved every jot of it. He has not received more than he merited, though others may have received less than they merit. The punishment is exemplary in the sense that it is notice given of similar discipline awaiting those who till now have escaped. Exemplary punishment, however, that is greater than the offender deserves and that is inflicted merely for the sake of its effect on others, is excluded. It is immoral to inflict such punishment. The criminal must be treated as a moral being. The act of punishment must be justifiable measured by moral standards.

Secondly, it follows that if the individual be a moral being,

his personality must be protected against any attempt to sacrifice him to what is called the good of society. The good of the greater number is no more sacred than that of one. The interests of society as a whole may not be invoked against the interests of a single member, no matter how humble and no matter how degraded. The mathematical fallacy in morals is of all fallacies the worst. What is really good for the swarm must be good for the bee, and what is really good for the bee must be good for the swarm. The interests of the individual and the social interests, rightly understood, coincide. They must be so understood as to coincide. The community, therefore, is never in its right frame of mind when it employs its brute force to bring the criminal to his knees, to efface him, to mutilate him, to destroy him, for its own supposed advantage. It is within the power of the greater number to do these things, but when it does them it acts like the agents of physical nature, in which sheer force predominates, and passes outside the moral realm.

It follows likewise from this that whatever means of discipline or coercion are resorted to—incarceration, compulsory labor, compulsory training in habits of industry, and the like—must be such and so applied that the person subject to them shall himself approve of their use when he has been sufficiently affected by them—this, on the ground that the exercise of force upon moral beings, whether children or backward adults, is justified only when it leads to the formation of certain habits, the formation of these habits being the indispensable prerequisite for the understanding of the principles upon which the habits are based. The general conclusion arrived at, at this point, is that the methods of punishment must be such as the criminal, when brought to his senses, will ratify and approve of.

But the main point involved in what has preceded remains still to be explicitly set forth. Crime is the act of a moral being. What does this signify? Leaving aside the case of the mentally unsound, it signifies that it was an act which the agent might have left undone, which it was in his power not to commit. Crime implies the imputation of guilt. This is the pivotal

point of the discussion of punishment upon which clearness and decisiveness of standpoint depend. No matter how deeply we may pity the accused at the bar, no matter how largely we may take into account the influence of evil heredity and the contributory influence of the misery due to social maladjustment in heaping up temptation in the path of the guilty human being, nevertheless, in the last analysis, we are bound to affirm that there was in his nature that which might have resisted the temptation; that he might have defied the evil solicitations if he had chosen to do so.

Victor Hugo, in *Les Misérables*, says that crime is the offspring of a darkened mind, and that the blame belongs, not to him who does the deed, but to him who put the darkness into that mind. But he who put the darkness into the other's mind must himself have had a darkened mind; and so the blame belongs, not to him but to someone else, who put the darkness into his mind; and so on without end, and the blame disappears altogether. If we abandon the notion of guilt as appertaining to the evil-doer (if we deprive him of his character as a moral being, and thus of the honor which remains to him in his utmost disgrace), if we deny that he is in truth the doer of his deed—then we degrade him to the quality of a mere thing, one of the countless terms in the series of nature's causes and effects. Then also we deprive punishment of its most valuable attribute; for punishment (and this is the gist of what I have to say), if it attributes censure, does so on the ground that the man was not the mere sport of circumstances, not the hopeless victim of heredity or environment, but that there was in him an indestructible force which he might have opposed to these invading influences. And, therefore, and on the same ground, it presents the sharpest appeal, the only sufficient appeal to him—however low he may have sunk—to use that same indestructible inward energy toward rebuilding his shattered moral fortunes, to make himself over anew. The recognition of one's guilt is the first necessary step to amendment. The gate of condemnation is also the door of renovation.

I spoke in the beginning of a certain fact upon which crim-



inal jurisprudence is to be rested, without losing itself in the labyrinth of metaphysics or of theology. This fact is before us: it is that we condemn ourselves and others for moral transgressions. But to condemn one who could not have acted otherwise than as he did would be self-contradictory. Condemnation involves the capability to leave evil deeds undone, and to bring home to the offender the sense of this capability is the main office of punishment.

But some will say that in the light of criminal anthropology and sociology, we ought not any longer to condemn—we ought to pity and educate, but not to censure. Criminal law, however, is the expression of the moral sense of mankind with respect to certain offenses, and the moral sense of mankind at present does require censure. Whether it will ever be otherwise, whether condemnation, implying that the deed might have been left undone, will ever fall into desuetude, or whether it stands for an ultimate fact, only experience can show. I myself hold to the latter view.

And there is one more closing word needed to ward off possible misconceptions of the position here taken. The criminal is guilty—he is not merely unfortunate or sick, the prison is not a hospital—but this does not warrant the violent statements of some, who maintain that he is to be held up to obloquy and hatred; still less that society should take the attitude of pharisaical self-righteousness toward him. The man is guilty; of that there can be no doubt. He has done the dreadful deed which he might have left undone. But the degree of his guilt it is wholly impossible for any human mind to judge. In determining the degree of guilt, three factors must be taken into account. The seriousness of the injury inflicted—whether it be the slaying of another, the robbing of another, the defrauding of another—is only one. We may infer, in a general way, that, other things being equal, he who operates the greater injury is the greater criminal. But other things are not equal, since there are two additional factors to be taken into account, namely, the strength of the temptation, due to heredity, environment, the vehemence of passion, *etc.*, and the moral



effort that was put forth to resist the temptation. Of these three factors we know only the one. We can but inadequately conceive of the stress of the temptation to which the man was subjected. We can appraise not at all the strength of the effort he may have put forth before he succumbed. And so we are bound to assert that, comparatively speaking, the culprit may be no worse a man—might in the eyes of omniscience, even be found a better man—than the rest of us, those of us whose life is correct in every particular so far as can be determined from the outside; yes, that the man there at the bar, if merit depends on the amount of effort put forth to resist, may be a better man than the judge who sits in judgment upon him. We, the rest of us, have never been as sorely tempted as he. Our lot has fallen in pleasanter places. We have been sheltered and guarded from childhood upward. Relatively to our temptations, the energy which we have exhibited in overcoming them has perhaps been inferior. And in this sense the word of the Puritan preacher remains true, who said, when through the open window he saw a man led to the gibbet, "There, but for the grace of God, go I."

But if this be so, how, without hypocrisy, is it possible for the judge to execute his office? Is it not written, "Judge not that ye be not judged?" Certainly, he is judged in pronouncing judgment, and just this is the hard duty which his office puts upon him, to be himself judged in judging another. In condemning the criminal he pronounces condemnation likewise upon himself and upon the whole community. For we are all guilty: first, because we permit temptations of such magnitude to be accumulated in the path of the offender; and secondly, because similar evil tendencies are present in us all, and we cannot be sure that, under similar circumstances, we might not have fallen to the same extent. The seat of judgment cannot be filled except with fear and trembling. The tribunal of justice is, or should be, almost as awful for the so-called righteous as for the convict. The published verdict is a reflux wave, rolling back over the whole of society, and punishment is not rightly administered unless the act becomes an act of humiliation and purifi-

cation to all who participate in it and to all who take cognizance of it.<sup>1</sup>

<sup>1</sup>The fundamental fact of practical free will, that the doer of the deed had the power to leave it undone, may perhaps be brought somewhat nearer within the range of comprehension by the reflection that the social nature as a whole is latent in everyone. The individual is not to be regarded as an independent integer who is connected with others by mere association or by other merely external ties. We are so made that each of us has needs for the satisfaction of which we depend on our fellows. We are "members one of another." A part of our very life exists in others. We are related to society as the leaf is to the tree. The whole tree is prefigured in every leaf. The whole of society is prefigured in every individual. Now this dependence is brought out into consciousness only gradually in the course of experience. Yet it may be assumed (without violence to psychological truth) that the sense of dependence is present subconsciously from the first. And hence when anyone violates the rights of another,—injures the life of another, on which his own intimately depends, the social nature within him will utter its protest (and if he was not enlightened before, as to the connection of his life with other human life, the very act by which he wrongs another will bring out into the light of consciousness this connection, and, instructed by the act, he will hold himself guilty in having performed the act); and this protest he is bound to heed, and he is competent to heed it because the social nature is his own inmost intrinsic nature.

## STATISTICS OF CRIME IN THE UNITED STATES

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TO evaluate properly the practical utility and scientific worth of such statistics of crime as we possess in the United States, one must first have a general notion of the purposes of such statistics and the uses to which they are put. Broadly speaking, the general interest in crime statistics centers in two things: first, in the amount of crime and its increase or decrease; and, second, in the personal characteristics of the criminal classes. These are the main lines of interest, but there are also subsidiary lines, such as the cost of repressing crime and the characteristics and efficacy of the system of criminal procedure. These several interests are, at some points, interrelated, and the transition from the consideration of one to that of another is easy and rational. How far any and all of the groups of questions here indicated are illuminated by the existing statistical records it is the purpose of the present paper to examine.

It is generally supposed that the amount of crime is subject to statistical determination, and statistics of crime are not infrequently referred to as measuring the amount of crime. The most casual consideration will show that despite this common form of statement, statistics never have measured the amount of crime and never can do so. In any logical view of the subject the amount of crime can be nothing less than the aggregate of offenses which are committed in a given period of time. Many offenses remain undiscovered by the public authorities, and in many cases, though the deed is known, the doer of it escapes apprehension. All that statistics can deal with is the amount of ascertained crime, or rather, to be more exact, the number of ascertained offenders. The distinction is thoroughly recognized by students, but is not always realized by the public generally. The persons affected by the proceedings of

criminal courts can be brought into relation to definite crimes only upon the basis of those found guilty and sentenced. The number of persons arrested or the number of persons brought before the courts would be an insecure basis upon which to build up a system of criminal statistics, important as these figures may be from the standpoint of the administration of the criminal law.

The system of repressive law undertakes in the interests of public morality and public welfare to punish a great variety of actions which are detrimental to the public good, but popular usage and to a considerable extent the law itself distinguishes degrees of harmfulness in these actions. A definition of crime is essential if the attempt be made to measure, even in the limited degree in which such measurement is possible, in any manner the amount of crime. Too frequently the word "crime" calls up in the mind of the hearer or reader the picture of murder, burglary and robbery, when the context hardly justifies so serious a view of the case. Very often the word "crime" as used by the statistician means nothing more than the aggregate of offenses against the law. Criminal jurisprudence in all countries makes distinctions analogous to those of our law between felony, misdemeanor, and minor offenses. The line of division differs in every system of jurisprudence, and it is no exaggeration to say that it is nowhere well defined. Whatever it is, it is only fairly well understood by the laity living under any given system and often puzzles the lawyers. In the United States, which has a different system of criminal law in every state, the confusion is well-nigh inextricable. France can and does publish a considerable part of its criminal statistics on the basis of infractions of specified articles of its code. In the United States no statistics involving more than one state can follow such a procedure. The statistician has no universal nomenclature of crime recognized legally throughout the length and breadth of the land. He must make his own classification as well as may be on the general lines of the criminal law, but without adhering to the legal classifications of any specific code.

It may be practicable in other countries to recognize statistically the legal categories of felony, misdemeanor, and minor

offenses. It is practicable to do so in any given state of the union. It is not practicable to do so throughout the United States. Therefore, when in the United States we speak of the statistics of crime we must almost of necessity use the word "crime" in its widest sense. If an attempt is made to distinguish between major and minor crime it cannot be done on the basis of legal definition, but must be upon some more or less arbitrary classification. For such a classification the length or character of the sentence imposed probably offers the best basis.

The argument for the exclusion of lesser offenses from the statistics of "crime"—and there is much to be said in its favor—is that these lesser offenses involve no moral turpitude, and represent obstructions to the convenience to society rather than any assault upon its fundamental principles and institutions. It is argued that crime is not conditioned upon time and space. An act prohibited in a city, and subjecting the doer to fine or imprisonment is frequently quite permissible in country districts. To designate such an action as crime has certain elements of absurdity. However excellent the argument, statisticians in the United States, with its diversity of law and with the diversity of our system of courts, find it necessary to disregard it. So far as we can have any general system of crime statistics it must define crime in the most inclusive sense, namely, all offenses against the law punishable by courts.

Whether in foreign countries the statistics of crime take cognizance of the distinctions embodied in their jurisprudence and disregard the offenses not classed by their legislation as the approximate equivalent of our felonies and misdemeanors, or whether such statistics embrace all offenses punished, they have a common method of procedure. This is to gather together the facts concerning the offenders in the courts themselves at the time the decision is reached that the accused is guilty.

This system of procedure is probably not possible in the United States. Except as regards offenses against federal law, the government of the United States has no jurisdiction over the multitude of courts of all degrees which determine offenders and mete out punishment to them. In order to carry out such a plan it would be necessary to clothe some official in every

court with the authority of a special agent of the United States for this purpose, and as no compulsion can be used, to make it profitable for him to undertake the work required.

In view of the prominence given in foreign statistical systems to the court statistics of crime, the prisons in those countries have been considered statistically mainly from the standpoint of the administrative management of such institutions. In the United States, on the other hand, we have attempted to make the statistics of prisons the main source of information in regard to crime. Prisoners were a subject of mention in the censuses of 1850, 1860 and 1870, with no explanation of how the figures were gathered, and were a subject of statistical examination in 1880, 1890, 1904, and 1910. The form of these statistics underwent a change in 1904. The most complete inquiry is that of 1910, now in process of elaboration in the census office. It comprises two features: (1) an account of the prison population on January 1, 1910; and (2) an account of all prisoners committed during the year to carry out a sentence imposed by the courts or for non-payment of fine.

The census authorities are of the opinion that this record of prisoners committed during a given year is a fairly satisfactory substitute for the judicial statistics of foreign countries. They are aware that the number of offenders so reported falls short of what would have been reported were it possible to use the methods of foreign countries. The prison-commitment system as compared with the court-record system omits two classes: (1) those who were sentenced to pay a money fine, and who did so; and (2) those who were accorded a suspension of sentence. With these exceptions, the magnitude of which cannot be estimated, the record in one case is as satisfactory as the other. It is possible to secure the record from the prisoners in the United States, when it appears impracticable to secure it from the courts, because the number of places in which the sentences are executed is very much less than that of places where sentences are imposed.

It appears from the foregoing discussion that there is no such thing as an absolute measurement of crime as a whole. All general statistics upon the subject are necessarily imperfect.



The record is at the best only partial and in the United States it is somewhat less complete than elsewhere.

But the measurement of the absolute amount of crime is perhaps the least important of several measurements which may be taken. It is of less interest than the answer to the question, Is crime increasing? or to the question, How do the different classes of crime compare with one another? Records which may be inadequate to measure crime in its totality may and do suffice if used with circumspection to make these relative measurements.

Whatever the proportion of ascertained crime to actual crime may be, there is, generally speaking, no reason to suppose that it changes much from year to year or even from decade to decade. Where crime statistics gathered upon the same basis exist for a series of years, comparisons of the number reported, having due regard to population changes, give us a fair measure of the absolute and relative changes in the amount of crime.

Such figures exist for many European countries. In the United States they do not exist, though the record of 1910, when completed, will with little difficulty furnish a direct comparison with that of 1904. It may seem strange that, despite the various efforts of the census bureau to collect statistics of crime, it should be asserted that we have no means at present of measuring changes in the volume of crime during the last thirty years in the United States as a whole. Before 1904 the criminal statistics of the United States were based wholly upon the population of prisons. They did not always clearly distinguish between the prisoners sentenced and those awaiting trial and held as witnesses. Moreover, the prison population is a poor test of the number of offenders. It depends not only upon the number sent to prison, but the length of time they stay there. If 100 prisoners were sent to jail yearly with a uniform sentence of one year the number at the end of two years would be 100. If they had a uniform sentence of two years the number at the end of two years would be 200. The number of persons in prison at a given time is a resultant of many forces, of which the number of crimes punished is only one. Statisticians are agreed that no fruitful and valid comparison of different periods can be made on such a basis.

Another form of measurement which has a decided interest is that of the relative frequency of particular crimes. If we have a fairly accurate indication of the aggregate amount of crime, the proportion which each kind bears to the total would have considerable significance. Such comparisons are a frequent feature of European crime reports and inasmuch as these reports have had the same basis for a series of years the increase or decrease of certain types of offenses is watched with the greatest attention by those who are concerned in any way with the problem of crime.

In the United States the last available statistics of crime, those of 1904, permit this form of comparison only in a limited degree. The limitation arises from the exclusion in these figures of the class of prisoners committed for non-payment of fines. There is no record of the punishments by fine which did not result in imprisonment, and it seemed at the time that the inclusion of those whose imprisonment resulted from non-payment of fine was undesirable. In 1910 the contrary course was taken, with the result that the figures will be fuller in the aggregate. None the less, the enumeration of 1904 permits such comparisons among all prisoners sentenced to time sentences. But this and the still incomplete enumeration of 1910 are the only ones which permit any judgment whatsoever as to the relative frequency of crimes. Hence, no comparisons as to the growth or diminution of any particular types of crime are permissible at present, and will not be except for the period of 1904 to 1910, when figures for the latter year are published.

It is perhaps important to point out why such comparisons cannot be drawn from the censuses of 1880 and 1890. These, as already stated, were confined to the prison population at the census date. The result of such a system of enumeration is to magnify the more important crimes and minimize the minor offenses. It will readily be understood that on July 1, 1910, the jails would harbor approximately one-twelfth of the persons who, in the previous year, had been sentenced to one month's imprisonment. They would contain all who had received a year's sentence. They would contain twice as many as had received a sentence of two years, and ten times as many as had

received a sentence of ten years. On the basis of the actual sentences reported in 1890, the writer has calculated that 45,115 sentenced prisoners, having terms of one year and more, represented 17,742 who were received in the prisons in the previous year, while 18,538 prisoners with sentences of less than one year represented 181,135 commitments in the previous year. These calculations suggest that the method exaggerates the volume of serious crime, and fails to recognize the enormous amount of relatively petty crime.

A specific instance will make this clearer. In 1890 there were 86 homicides in the prisons of Massachusetts. State records showed that the commitments for the year were twelve in number. It is plain that if the death penalty were universally applied in murder cases the number of murderers would be only those awaiting execution. In such a country as Great Britain, where execution follows sentence with little delay, the number of murderers sentenced in a year would be much greater than the number confined at any time. On the other hand, were life imprisonment universally substituted for the death penalty, the number of murderers in prison would be vastly greater than those convicted in any one year.

At the outset it was stated that the first interest in crime was in the measurement of its amount. The discussion has shown that there is theoretically no such thing as an absolute measure of crime. But, it has also been shown that European countries come much closer to such a measure than do we in the United States. This results from the fact that with us the administration of the criminal law is not uniform, being largely the affair of the individual states, which have widely differing legislation and judicial machinery. Relative measures of crime concern, in the first instance, its growth or diminution in the aggregate. Here we have at present nothing in the United States, though European nations have safe bases of computation. Such relative measures include also the relative frequency of crime and the growth or decrease of particular types. In the United States we know, in 1904, something of the distribution of crime among persons having received a time sentence, but as to the increase or decrease of any specific type of crime we know nothing.

If we turn to the second main interest in the matter of crime, namely, the personal characteristics of prisoners, the standing of the United States is, on the whole, much better in comparison with foreign countries, but even here it is at present hardly satisfactory. This is due to no lack of effort. On the contrary, the characteristic of our criminal statistics is the wealth of detail concerning personal characteristics. We have, in some respects, gone further than would seem wise to European statisticians. But for lack of a proper basis, this effort before 1904 was largely futile. Our earlier figures gave a false light upon the relation of sex to crime, since women commit offenses of lesser gravity. They gave a false light upon the races in connection with crime, since the negro either commits more serious crime or receives longer sentences than the whites. They gave a false light upon the question of nativity, since investigations seem to show that the offenses of the foreign-born are, as a group, less serious than those of the native-born.

These difficulties were completely removed by the statistics of 1904, based, as already stated, upon the number of persons committed to prison during the year after the determination of the offense.

But it is not enough to ascertain the personal characteristics of prisoners. Care must be exercised to maintain the same categories of personal description as are available in the population at large. When the crime figures relate to the same year as the census of population, the rational method of weighing the significance of the crime figures is to calculate ratios between the number of each class in prison and the number in the population at large. Such comparisons take the form of so many prisoners for a given number, usually 100,000 of the corresponding population. When the crime figures and the population figures fall in different years such a method can be followed only when the population of a given category can be estimated with reasonable accuracy. In the absence of such estimates, which introduce an element of uncertainty at the best, the most practicable comparison is between certain proportions; for example, between the proportion of negro prisoners to all prisoners, and the proportion of negro population to total population.

In such manner we can estimate whether a given group is contributing more or less to the prisoners than would normally be expected from its strength in the general population.

Whatever method of comparison be followed, it is obvious that no conclusions can be drawn unless there are corresponding data for the population at large. The attempts made in certain penal institutions, which delight the hearts of amateur statisticians, to determine the number of criminals who use intoxicants are well nigh worthless. We have no knowledge whatever as to how the adult male population in the United States generally are divided with respect to the use of intoxicants. It is equally purposeless to determine how many criminals have enjoyed a superior education, since we know no corresponding facts in the population at large. German statisticians have called attention to the futility of including in statistics of criminals any notice of whether they were of legitimate or illegitimate birth, since no corresponding facts are known respecting the general population.

When comparisons are made of various characteristics among criminals we need to know corresponding facts for the population. It is not illuminating to direct attention to the fact that most prisoners are under fifty years of age, since most other persons are also. Comparisons must also be made not with the population at large, but with the groups from which criminals may be drawn. Crime is a product of adult life, and we must compare criminals with adults. With the same relative criminality as the native-born, the foreign-born in the United States will always show a higher apparent crime rate when the comparison is based on the total population. Foreign-born persons in this country are almost exclusively adults, native-born persons include in the aggregate population not only the children of native-born parents but also the greater part of those of foreign-born parents. To determine what is the relative crime rate we must, in such cases, deal exclusively with the adult element, and leave all children out of the reckoning.

Using the proper cautions, we can then determine with reasonable accuracy the prevalence of crime in certain main categories of the population. We can tell how the male compares with the female, how the negro compares with the white, how



persons of foreign birth compare with those of native birth, how persons of foreign parentage compare with those of native parentage, how different classes of age groups compare with one another. Using additional precautions as respects age, we can tell how the marriage relation compares among criminals and the population at large, and in broad general lines, can tell something about the contribution of different occupation groups to crime.

Again, it is to be noted that these matters can be satisfactorily studied only upon the basis of the 1904 report. There is, therefore, no material from which any shifting of these conditions could be deduced. We have created the basis, and if we do not depart from it we shall be able to make some comparisons of a historical character. But this again is a matter for the future.

Statistics of recidivism have been attempted in the United States, but neither here nor in Europe can the resulting facts be accepted as worthy of any notable confidence.

Some foreign countries publish noteworthy details in regard to the operations of criminal jurisprudence. Thus we know in England how many offenses are reported to the police, how many arrests result, how many persons are brought to trial, how many are discharged, how many plead guilty, how many not pleading guilty are found guilty by the courts, and how many appeals are entered and allowed. No one will contest that such figures properly related to one another would be of absorbing interest. But no such figures are available in the United States, nor does it seem probable that we shall ever have them. The court systems and proceedings of the different states are too diverse to make a satisfactory showing, even were the census bureau or any other federal organization equipped with the power or the resources to collect all the facts in the case. Lack of uniformity in the criminal procedure and lack of jurisdiction in the federal government oppose well-nigh insuperable obstacles to any fruitful effort in this field.

It remains to mention briefly the "cost of crime." This is a phrase which makes a wide popular appeal, but one which the statisticians fight shy of. I cannot find that there has been any



intelligent effort to ascertain what elements ought properly to enter into such a calculation, and what has been published on the subject is far from convincing. But even if there were any recognized formula for obtaining the cost of crime, its application under the diverse systems of law, of administration, and of records which prevail among our many states would be a task so difficult that it would baffle anyone who should attempt it.

We have found the statistics of crime in the United States deficient in many points. Our discussion has used the term United States throughout to indicate the country as a whole. What is true of the whole is not necessarily true of all the parts. Yet as a matter of fact it is literally true of all but one or two states. In a few states certain figures can be found which are lacking for the country as a whole. But even in such states there has been no development of crime statistics as a whole which meets the requirements which may reasonably be made.

Our summary of the purposes to which crime statistics may be put shows that as yet we have no body of facts in the United States comparable to that existing in European countries. It is more than fifty years since such statistics found a lodgment in the reports of the United States census. But for fifty years we pursued false methods, and the records of those years are almost valueless for the legislator and the historian. We have only just emerged from this state. We have created a new and proper basis for statistics of crime and we look forward to the future to give us fuller light upon this important topic. In departing from the old basis the only criticism which can be justly brought against us is that our figures are not sufficiently frequent, or that if these figures are to be gathered only from time to time, we have failed to establish a normal interval between our enumerations.

These are minor criticisms which detract little from the excellent work which is now going on. We have taken many years to recognize what are the essential conditions of such statistics, but I believe that we have found the right way and are walking in it.

## NEEDED CHANGES IN CRIMINAL PROCEDURE<sup>1</sup>

WILLIAM HOWARD TAFT

President of the United States

I AM sure you do not expect me to engage in a comprehensive consideration of the changes needed in the law and rules of criminal procedure to make more certain and expeditious the punishment of crime in this country. (The statistics which show the crimes that go unpunished in the United States as compared with those in England are startling and humiliating to any son of America who has pride in his fellow-countrymen as a law-abiding and law-enforcing people. A study of the English system will show that their procedure and their guaranties in favor of the individual as to indictment, trial and conviction, and their provision for the security of the liberty of the individual are exactly the same as ours; for we derive ours from them. Our bills of rights, in both federal and state constitutions, are simple copies of limitations found in the Magna Charta, the Petition of Right, and the Bill of Rights, which are part of the British constitution.

Why is it, then, that speaking generally, every person who commits a crime in England is tried and rarely escapes punishment, while in this country it is not too much to say that a majority escape the law? Certainly, if the statistics of the whole country are taken and the crimes considered are those of violence, the proportion of those who are never tried or who, being tried, escape punishment, is a good deal more than fifty per cent of those committing such crimes.

What are the changes that have taken place in the transplanting of the English system to this country that have weakened its effectiveness and that now call loudly for reform? We cannot find the explanation, of course, in Jeremy Bentham's

<sup>1</sup> An address delivered at the dinner of the Conference on the Reform of the Criminal Law and Procedure, May 13, 1911.

impeachment of criminal-law procedure, because what he said was said of the English system. His comparison of the trial of a murderer to a game or a fox-hunt, in which the criminal was given a certain start and had the benefit of a number of rules to prevent his conviction, rules that really interfered with proof of his guilt to the satisfaction of every common-sense mind, would apply as well to the English system as to our own.

Wherein is the great difference, then, between the effectiveness of the two systems? I believe it to exist in the character, experience and learning of the judges, in the power which they maintain and exercise in the course of the trial for the saving of time and the simplification of the issues, and in the respect and obedience given to their intimations from the bench as to the proper behavior of counsel in the conduct of the case. If there is any other reason for the difference it cannot be found in procedure. It must be found in the lighter regard for law and its enforcement on the part of the people as a whole and a consequent less rigorous public opinion in favor of the punishment of crime, which relieves prosecuting officers and grand juries from the highest standard in this regard, and which finds its way into, and exerts its influence in the jury panel during the trial and in the jury room during the consideration of the verdict. I am not disposed to minimize this last cause, and I am inclined to think that it is very influential and that it is shown to be such by a similar difference in the effectiveness of machinery for the prosecution of crime in the older states and in the newer and far western states. But, this reason aside, I know of no other ground that will explain the difference between the admirable working of the English machinery for the prosecution of crime and that in this country except what I have called attention to in the character and power of the judge and in the method and conduct of counsel for the defendant.

The trial by jury secured by the Magna Charta in England and required by the bills of right of our constitutions was a trial by a court and jury, or rather by a court which was made up of a judge and jury, in which the functions of the judge were quite as important and ought to be as sacredly preserved as the functions of the jury. The tenure of the judge was during

good behavior, practically for life. He was a trained lawyer whose position at the bar when he was appointed gave him a prestige which his elevation to the bench only emphasized. He had complete charge of procedure in the court room. He took an active part in the trial. He followed closely the questions of counsel. For the purpose of clearness, he often took the examination out of the hands of counsel and conducted it himself. He limited the cross-examination of counsel to matters that were of importance in the issue. He refused to permit the time of the court to be taken up with cross-examination as to small and unimportant circumstances. And when it came to charge the jury, he not only told them what the law was, but he applied the law to the facts, commented on the evidence, frequently indicated an opinion as to the weight of the evidence, but left the decision finally to the jury. If counsel for either the prosecution or the defense had sought by argument to involve the real issue in obscurity and to introduce some other and irrelevant issue, it was his function to clarify the matter and "brush away the cobwebs;" in other words, to simplify the question which the jury was to decide.

In this way the histrionic talent of counsel, the facility for minimizing all important facts, and the exaggeration of unimportant circumstances were not permitted to affect the verdict of the jury if the court could remove their influence by sober and clarifying comment.

Originally, and until a very recent date, there was in England no appeal from the action of a judge and the sentence of a court. The judge might himself reserve doubtful questions of law to a court of a number of judges who would decide the question, but there was no writ of error or appellate proceeding permitted. Now the appeal has been introduced in England, but introduced as it is as a modification of the old system, the appeal is permitted only in important matters, and technicalities such as occupy so much of the appellate proceedings in this country are almost unknown. This prestige of the judge as a learned and skilled lawyer and his power in the conduct of the trial enforces a respect for his rulings and his intimations as to the proper course for the trial to take by counsel for both

the prosecution and the defense, so that he always has the trial well in hand for the purpose of expedition and simplification of the issues. Nothing else can explain why four weeks should be taken in this country in the trial of a murder case which can be disposed of in an English court of justice in one day or two days. And yet, with all this expedition and certainty of punishment, who ever complains of injustice or oppression in an English court? Is not the administration of justice in that country the admiration of the world?

I wish to comment on the effect that the change in the power of the judge in this country in the matter of the management of the trial has had upon his ability to shorten the trial and simplify the issues, and upon the methods of counsel for the defense and their conduct in the court room. One of the strongest influences for looseness in criminal trials, in my judgment, has been the presence of lawyers in our legislatures who have sought to abate and limit by statute the power of the judges, and to take away from them this source of respect for their rulings which is so apparent in every English court of justice. What I believe to be an unfounded fear of judicial tyranny and an unreasonable distrust of judges have led to statutory limitations upon their power in the conduct of criminal trials, and have made the trial by jury in this country, and especially in the western states, an entirely different institution from what it was understood to be at the time of the adoption of our constitution. In many states judges are not permitted to comment upon the facts at all. They are not even allowed to charge the jury after the arguments of counsel, but they are required to submit written charges to the jury upon abstruse questions of law with no opportunity to apply the principles concretely to the facts of the case, and with the result that the questions, both of law and of fact, are largely left to the untutored and undisciplined action of the jury, influenced only by the contending arguments of counsel. The restraint that the judge in the course of a trial imposes upon the manner and conduct of counsel in an English court is thus wholly wanting, with the result that there seems to have been a substantial change in the code of professional ethics governing counsel and



in the extremes to which counsel in the defense of their clients seem to think it is entirely proper for them to go. Their conduct makes neither for the dignity of the court, for the elevation of the ethics of the bar, for the expediting of criminal procedure, nor for the reasonable punishment of crime. These circumstances reduce the position of the judge from that place of power and usefulness occupied by the English judge to one in which the trial is largely conducted by the chief counsel for the defense, and those present in court are made to feel that the question at issue is not so much whether the defendant violated the law as whether the judge is violating it.

And now, not content with reducing the position of the judge to one something like that of the moderator in a religious assembly or the presiding officer of a political convention, the judge is to be made still less important, to be put still more on trial and to assume still more the character of a defendant, by a provision of law under which, if his rulings and conduct in court do not suit a small percentage of the electors of his district, he may be compelled to submit the question of his continuance on the bench during the term for which he was elected to an election for recall, in which the reason for his recall is to be included in two hundred words, and his defense thereto is to be equally brief. It can hardly be said that this proposed change, if adopted, will give him greater authority or power for usefulness or constitute a reform in the enforcement of the criminal law of this country. It will certainly not diminish the power or irresponsibility of counsel for the defendant. Let us hope that the strong sense of humor of the American people, which has so often saved them from the dangers of bathos and demagoguery will not be lacking in respect of this "nostrum."



## THE DIFFICULTIES OF EXTRADITION<sup>1</sup>

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**I**F I were asked to mention a subject that would clearly illustrate the slowness with which the human mind may rid itself of primitive conceptions that have ceased to have any foundation in existing conditions, I should not hesitate to suggest the subject of extradition. It is admitted that there exists in every community, no matter how highly developed and generally civilized, a certain amount of evil, and that for the suppression of such evil penal laws must be made and enforced. As applied to itself, each country regards this fact as self-evident and considers the repression of crime to be among the first, if not the very first, of its duties. But the moment a national boundary line is crossed, a change seems to come over the spirit of our dreams. The criminal becomes an object of special consideration, if not of sympathy. There is a tendency to regard him as persecuted rather than as simply prosecuted. The stern demand for the relentless enforcement of the law is quickly paralyzed by suspicion, while efforts to defeat its enforcement are viewed with complacency if not with warm approval.

Primarily, these contradictory phases of mental and moral action are to be ascribed to the fact that international jealousies, often narrow and uninformed, have caused the survival among nations of the conception of asylum, which every civilized nation has banished from its own law. In its original sense the word "asylum" was highly descriptive, and was applied to privileged places devoted to special uses, among which was that of shelter for the fugitive. If the fugitive could reach such a place, he was safe from pursuit, and had gained for himself a

<sup>1</sup> Read at the Conference on the Reform of the Criminal Law and Procedure, May 12, 1911.

right to protection which could not be violated. This right was the "right of asylum." It was the natural product of the conditions under which it arose. The inspiration of the ancient criminal law was the principle of vengeance; and the right of private vengeance was fully recognized. The slayer was pursued by the avenger of blood, and if overtaken was summarily killed. It is not strange that under systems based so completely upon the *lex talionis*, sentiments of religion and of humanity, as well as of justice, should have suggested means of escape from indiscriminating violence.

As suspicion declined and private vengeance was displaced by the regulated action of judicial tribunals, the privileged places of refuge ceased to exist; but all the ideas with which the practise of asylum was identified did not perish with them. From having been so long accorded, hospitality and protection had come to be regarded as the fugitive's privilege, and in the end each separate state became a refuge for offenders against the laws of other nations. The term "right of asylum," though still used in this relation, gradually lost its ancient fitness. As the administration of justice improved and the distrust of foreigners abated through the familiarity of intercourse and the perception of common social interests, nations came to understand their rights and duties better, and the notion that protection was a right belonging to the fugitive disappeared. In its place there was established the right of the state either to extradite or to expel any offender who comes within its jurisdiction. Nevertheless, the so-called right of asylum continued to survive to the extent that each government claimed the right to grant asylum to fugitive offenders if it should see fit to do so. This right, it is true, is now generally admitted to be coupled with the duty, which is amply acknowledged by the multiplication of extradition treaties, to abstain from asserting the sovereign power for the purpose of shielding criminals in all cases from trial or punishment by the competent authorities of the country whose laws they are charged with having violated. But the idea of asylum, as regards fugitives from the justice of foreign countries, still so far prevails in the popular mind that it has prevented the system of extradition from being

placed on the broad foundation which the interests of society require.

Extradition is the act by which one nation delivers up an individual, accused or convicted of an offense outside its own territory, to another nation which demands him, and which is competent to try and punish him. Why should obstacles be placed in the way of the performance of this act by civilized nations?

That such obstacles do exist is undeniable; but they do not exist to an equal extent in all countries. On the continent of Europe, extradition is to a great extent treated as an administrative process. In England, and in the United States, the process is partly administrative and partly judicial; but it is in the United States and in some of the British dominions that the combination of the two procedures has been carried farthest and with results obstructive to the administration of justice.

With the exception of the twenty-seventh article of the Jay treaty, which expired in 1807, the first extradition treaty negotiated by the United States was that contained in the tenth article of the Webster-Ashburton treaty of 1842. By this treaty it was provided that a fugitive should be delivered up on such proof of guilt as would justify his commitment for trial in the country in which he was found, if the crime had been there committed. This rule was embodied in other treaties subsequently negotiated, and has been generally incorporated in the extradition treaties of the United States. The examination of the question of guilt was committed to the judicial magistrates. If those magistrates found that there was "probable cause," the fugitive was committed for surrender; and the issuance of the warrant of surrender by the executive was regarded as purely ministerial. This was the actual rule down to 1871. In that year, without any statement of reasons, the executive in a certain case disregarded the finding of the judicial magistrate and refused to issue a warrant of surrender; and since that time the power has been frequently asserted. In this manner a serious difficulty was put in the way of extradition. Even after a long and expensive judicial examination, with writs of habeas corpus and appeals, there was no longer any assurance that a judicial commitment

would be followed by the delivery up of the fugitive. There is, in fact, in our records, one case in which a fugitive from the justice of Canada was three times successively committed by the judicial authorities for surrender, and was three times successively discharged by the executive, the application for his extradition thus failing altogether. Several years afterwards this special object of solicitude and protection was convicted by our own courts as an opium smuggler.

Another difficulty has been that by the decisions of some of our courts the raising of petty technical objections has at times been much encouraged. By the decisions of other courts, and especially by those of the Supreme Court of the United States, the raising of such objections has been discouraged. But, as the raising of them, whether encouraged or discouraged, is gratifying to the fugitive and profitable to his counsel, they have by no means disappeared from our procedure.

The raising of technical objections has been facilitated by defects in our statutes. These statutes present a conglomeration of enactments, some of which are in their terms altogether inappropriate to the process. It is a fact that, twenty-five years ago, but for the misinterpretation of one of these statutes by the courts, extradition with Great Britain and perhaps with other countries would have broken down. At that juncture, an attempt was made to replace the existing inconsistent enactments with a comprehensive statute which it was believed would simplify and facilitate the execution of our treaties; but the attempt failed owing to the pressure of other business upon Congress and the lack of any general public interest in the subject. The courts have consequently gone on living from hand to mouth.

The result of the conditions which have been indicated is that the process of extradition from the United States has been exceedingly expensive. In one case it cost the French government nearly 200,000 francs, or \$40,000, to obtain the extradition of certain fugitives. This case probably furnishes the high-water mark of expenses in extradition proceedings, unless it be exceeded by the scandalous case of Gaynor and Greene; but it has not been uncommon for the cost to amount to from \$5,000 to \$6,000 in a particular instance.

This obviously creates a real difficulty in the way of extradition. In the case of one government having an extradition treaty with the United States, this difficulty was once diminished in a systematic fashion. The minister of the country in question made rather frequent applications for preliminary warrants or mandates for the arrest of fugitives, but rarely afterwards applied for warrants of surrender. One day when he was applying for a preliminary paper, the remark was made to him that he seemed to have bad luck with his cases, since he apparently seldom obtained the extradition of his fugitives. He replied that, far from having bad luck, he was meeting with uniform success; and, seeing that his meaning was not fully comprehended, explained that, as he had found the pursuit of the ordinary legal process to be troublesome, expensive, and altogether uncertain, he had followed a plan of his own. This plan was to offer to the fugitive a first-class steamer passage, with plenty to eat and to drink, and a hint that his only hope of leniency might lie in a voluntary return. The cases were, he said, extremely rare in which this method failed to work; and he had found it to be more economical than the employment of counsel and the payment of costs.

Now, the point which I specially desire to make, is, can any one give even a plausible reason for the existence of such a state of things? Let us analyze the subject into its elements. We have for years had upon our statute books laws by which we have repelled or expelled from our shores alien immigrants by the thousand without the slightest compunction. The grounds of exclusion have repeatedly been enlarged, till the prohibited classes embrace idiots, epileptics, and persons afflicted with a loathsome or with a dangerous contagious disease; insane persons, and persons who have been insane within the five preceding years or who have had two or more attacks of insanity at any time; paupers, professional beggars, or persons likely to become a public charge, of which likelihood the possession of less than fifty dollars is considered as proof; polygamists; persons convicted of a non-political crime or misdemeanor involving moral turpitude, whether they have or have not served their sentence; prostitutes or procurers; anarchists, or persons who



believe in or advocate the violent overthrow of the United States government or of all government or all forms of law, or the assassination of public officials; and persons under contract to labor, with the exception of persons belonging to the professional classes, persons employed strictly as personal or domestic servants, and skilled laborers of a class in which none unemployed can be found in the United States.

Instead of obstructing the execution of these laws, we make a general demand for their rigorous enforcement. Let an alien come to our shores who is guilty of the omission to have fifty dollars, and we send him back without hesitation to the country from which he came. Let him come with the guilt resting upon him of murder, burglary, arson, or other crime, and we cover him with the mantle of our protection and extend to him the sympathy due to a hero and a martyr. In other words, call our statute an immigration law, its enforcement is commended and arouses no suspicion; call it an extradition law, and large opportunities are afforded to evade and defeat it.

This difference in mental attitude appears to be due to primitive association and prejudices. And yet, although the United States has had extradition relations with foreign governments on an increasing scale since 1842, in all that time there has not been a single case in which it has been shown that the process of extradition was abused.

Coming to the practical aspects of the matter, I would venture to make certain suggestions.

In the first place, every nation should have a general law authorizing the executive or administrative authorities to deliver up fugitives from justice, specifying the cases in which this may be done, and regulating the procedure to be followed. The operation of this law might be made to depend upon reciprocity, by treaty or otherwise, for the most part, but not wholly.

In the second place, may not the extent to which a fugitive shall be permitted to go in resisting extradition, be made to depend upon his nationality? If he be a citizen of the country from which his extradition is demanded, in other words if his surrender involves the taking of him from his home, the establishment of probable cause of guilt may be required to be made



under special safeguards. If, on the other hand, he be an alien, there appears to be no reason why he should be entitled to anything more than a fair examination before some one judicial or administrative authority designated for the purpose. Certainly this is so with regard to a person who is a citizen of the country by which the demand for extradition is made. The fact that he has committed a crime, or is charged with having committed it, should not entitle him to greater consideration than is shown to the immigrant who comes to us without any shadow of guilt or wrong-doing.

In the third place, a distinction should be made between persons charged with crime and persons convicted of crime. Under the immigration law, the immigrant is sent back to the country from which he comes upon the bare fact of his conviction; and this is the case without regard to the question whether the country from which he comes is or is not the country in which he is under sentence. No reason can be given why, if the fugitive from justice is called an immigrant, he is returned upon the fact of his conviction, while, if the immigrant is called a fugitive from justice, the question of his guilt should be re-examined.

To what I have said, an exception is to be made in the case of political offenders. It is a general principle, upon which governments act, that, if the offense with which the fugitive is charged or of which he has been convicted is of a political nature, he is not to be surrendered. For the examination of this question, the amplest opportunity should always be afforded.

We may now briefly consider the subject of the recovery of fugitives from justice as between the states of the United States. Since 1891 this process has gradually come to be technically described as interstate rendition, but it is still often spoken of as "extradition." The latter term is, however, as applied to the interstate proceeding, inaccurate and misleading. On the supposition that they were dealing with extradition in the true and international sense, public officers and law writers have sometimes consulted the principles of international law and applied them to a subject which they do not govern. The transfer of an accused person from one part to another of a country having a

common supreme government is not an international proceeding. Clearly it is not so as between the states of the United States.

Sub-section 2, section 2, article 4, of the constitution reads as follows: "A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime." Both the scope and the character of this provision show that it is not in the nature of an engagement between foreign and independent nations. The general principles of international law exclude the surrender of political fugitives; the provision in question, framed by men who had just been engaged in a revolution, expressly requires surrender for treason. Moreover, there is no restriction as to the offenses for which delivery may be demanded; international conventions either enumerate and define the extraditable crimes, or else by a general clause confine the operation of the treaty to offenses of a certain gravity. The reasons for the sweeping provision of the constitution are obvious. Among the purposes for which the constitution was declared to be ordained were "to form a more perfect union, establish justice," and "insure domestic tranquility." Each state was guaranteed a republican form of government; due process of law was secured; and the states were forbidden to pass any bill of attainder, or *ex post facto* law. Thus mutual confidence and mutual aid were worked into the fabric of the union; and the duty of rendering up fugitives from justice was imposed without limitation in order that the law might everywhere and in all cases be vindicated. The right to grant asylum, generally denominated "the right of asylum," upon which so many of the fundamental rules of extradition depend, was excluded as between the component parts of the United States.

The provision in the constitution for the rendition of fugitives from justice involved no new principle. It merely prescribed a method of accomplishing what had under different conditions been done in another way, and substantially confirmed a pre-existing practise. For example, it had been the custom as between Pennsylvania, New Jersey, Maryland and Delaware to

permit a fugitive from justice to be taken upon a warrant signed by the chief justice of the state or colony from which he escaped and indorsed by the chief justice of the state or colony in which he was found. A similar custom prevailed elsewhere.

By act of February 12, 1793, Congress undertook to make the constitutional obligation effective. This act made it the duty of the executive authority of the state or territory in which the fugitive should be found to deliver him up, upon the production of a demand accompanied with a copy of an indictment found or with an affidavit made in the demanding state or territory and certified by the governor or chief magistrate thereof as authentic, charging the fugitive with the commission of a crime.

For fifty years the constitutional provision was executed substantially without judicial interference. In 1842, however, in the case of *Ex parte Smith* (3 McLean, 121), a prisoner, who was held under a warrant of surrender, was discharged on *habeas corpus* on the ground that the requisition did not disclose sufficient evidence to show that he was a fugitive from justice. After this decision, the courts began to grant writs of *habeas corpus* with increasing frequency; and while, in some cases, the courts held that they could go no further than to see that the papers were in due form, in other cases they did not hesitate to review the governor's action. In this way the entire process gradually came to be the subject of judicial review. Statutes were also adopted in various states for its regulation. Moreover, the governor of the state in which the fugitive was found would sometimes, without legal reason or excuse, refuse to surrender him; and it was held by the Supreme Court of the United States in the case of *Kentucky v. Denison* (24 Howard, 66), in 1860, that the governor of a state was an official so exalted that he could not be compelled by a writ of mandamus to discharge his constitutional duty, no matter how plain it might be.

In 1887, Governor Hill of New York, with a view to remedy the existing confusion, took steps which resulted in the holding of a conference of representatives of the various states in the city of New York for the purpose of securing the adoption of a uniform system of rules and practise. A set of rules, closely

following rules which Governor Hill had himself adopted two years before, was drawn up and was afterwards put into force in many of the states and territories. But these rules, while they tended to secure uniformity of executive practise, could not extend to or regulate the practise of judicial review, nor could they compel a governor to discharge his duty where he saw fit, for political or other reasons, to disregard it.

As the result of the conditions which have been described, the process of interstate rendition obviously stands in need of regulation. Such regulation could best be secured by substituting for the meager act of 1793 a comprehensive federal statute, which should be exclusive in its operation. And as it has been held by the Supreme Court that the governor of a state cannot be compelled to discharge his constitutional duty, it would, as the constitution does not designate the official to whom the demand for rendition shall be addressed, be competent in such an act to relieve the state executives of the duty of surrender altogether, and to impose it upon some other official, perhaps upon some judicial officer, so as to do away with the present combination of executive and judicial action, a combination which, although it affords large opportunities of escape to fugitives who have money to spend, does not tend to promote the ends of justice or respect for law. For it is always to be borne in mind that, in extradition and in interstate rendition, the question to be determined is not whether the accused is guilty or innocent, but whether he is duly charged with crime, and that the refusal to deliver him up on a proper charge means simply that legal justice shall not in his case be administered.

## THE POWERS AND IMPORTANCE OF THE MAGISTRATES' COURT<sup>1</sup>

ALFRED R. PAGE

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THE importance of the magistrates' courts in this city has been very generally underestimated by reason of the fact that the cases in which they have the power to determine the guilt of defendants and to pronounce sentence involve offenses of a minor character. A consideration of the number and character of the cases brought before these courts and the intimate relations that the questions there considered bear to the development of civic virtue and enjoyment of civic life will show how erroneous is this estimate.

In this paper I shall consider the importance of the magistrates' courts of the first division, which comprise those of the boroughs of Manhattan and the Bronx, rather than those of the entire city, because the greater part of the business of the entire city is transacted in this division, and also because the greater volume of business has made possible a division and specialization of the courts here that does not exist in the other boroughs.

The law secures to a man accused of an offense an early opportunity for a judicial investigation, and therefore requires that a defendant, when arrested, must in all cases be taken before a magistrate without unnecessary delay that he may be dealt with according to law. Thus the magistrates' court becomes the court of first instance for all grades of criminal offenses. In cases of felony or misdemeanor the magistrate must immediately inform the defendant of the charge against him and his right to counsel, and must grant sufficient time to send for counsel. Witnesses must be examined in the presence of the defendant and may be cross-examined in his behalf. The defendant may make a statement, if he desires, but the magistrate must inform

<sup>1</sup> Read at the Conference on the Reform of the Criminal Law and Procedure, May 12, 1911.

him that his refusal to do so cannot be used against him. The accused person also has the right to produce witnesses, who must be sworn and examined. If it appears from this examination that a crime has been committed and that there is sufficient cause to believe the defendant guilty thereof, the magistrate orders him to be either committed or held in bail to answer the charge, if it be one of felony or criminal libel, on indictment by the grand jury either in the supreme court or in the court of general sessions of the peace; if it be one of misdemeanor, for trial in the court of special sessions. If, however, it appears from the examination either that a crime has not been committed, or that there is no sufficient cause to believe the defendant guilty thereof, the magistrate must order his discharge. This is not necessarily the final disposition of the matter, for the district attorney may, notwithstanding the decision of the magistrate, submit the evidence to the grand jury for its action, in felony cases, and in the event of an indictment the defendant is arrested and tried in the higher court for the offense. In cases of misdemeanor, other than criminal libel, the magistrate, within five days after discharging or holding the defendant, must return to the district attorney a statement of the name and address of the defendant, the crime charged, the name and address of the informant, and the names and addresses of all witnesses who were subpoenaed or sworn upon the examination, or who made depositions in support of the information. The district attorney may then either make and file with the clerk of special sessions an information against the defendant, upon which he will be arrested and tried, or may move in that court for the dismissal of the prosecution of the action.

If the charge is a violation of a law or ordinance not classified as a felony or misdemeanor, the magistrate has summary power and jurisdiction to try the case, determine guilt, and sentence accordingly. These offenses comprise charges of disorderly conduct, public intoxication, violation of municipal ordinances, violations of the sanitary code, violations of the sabbath law, vagrancy, insanity, and disorderly conduct.

During the year 1910, in the magistrates' courts of this division, there were arraigned: for felonies, 10,730 persons; for



misdemeanors, 26,963 persons; for offenses of which the magistrates had summary jurisdiction, 82,761 persons—a total of 118,802 persons arraigned in the eleven magistrates' courts of this division.

These figures are impressive as to the importance of the magistrates' courts, but when we analyze the offenses comprised in the technical classification above mentioned, of which the magistrate has summary jurisdiction, the importance of these courts becomes more manifest. Under the heading of "disorderly conduct" we find: soliciting for purposes of prostitution, fighting in the streets, jostling by pickpockets, disorders arising from strikes, disputes between public hackmen and passengers—in short, anything that tends to a breach of the peace on the public streets. "Public intoxication" means that a person is charged with being intoxicated on the streets or in a public place. To regulate the traffic of the streets, to secure safe and proper buildings, to define and limit the right to use the public thoroughfares, and to secure to the individual the greatest enjoyment of our complex and cosmopolitan existence with the least friction and interference by others, a large number of corporation or municipal ordinances have been adopted, the violations of which are punished in these courts; as are also violations of the sanitary code, which consists of ordinances for protecting and safeguarding the health of the community through proper sanitation and the securing of a healthful food supply.

Of the 82,761 persons arraigned in summary proceedings 77,064 were charged with offenses classified under these four general headings. Thus it becomes manifest that no other courts bear so closely upon the daily affairs of our life. The provisions of law to secure the safety, morality and peace of the streets, the comfort and welfare of the home and the health and happiness of the community are here enforced.

In addition to those charged with these offenses, the social derelict, the flotsam and jetsam of city life, the habitual vagrant, the temporary unfortunate who is out of work and unable to provide for himself, the wayward girl from the street and brothel, the intemperate or inhuman husband and father who

him that his refusal to do so cannot be used against him. The accused person also has the right to produce witnesses, who must be sworn and examined. If it appears from this examination that a crime has been committed and that there is sufficient cause to believe the defendant guilty thereof, the magistrate orders him to be either committed or held in bail to answer the charge, if it be one of felony or criminal libel, on indictment by the grand jury either in the supreme court or in the court of general sessions of the peace; if it be one of misdemeanor, for trial in the court of special sessions. If, however, it appears from the examination either that a crime has not been committed, or that there is no sufficient cause to believe the defendant guilty thereof, the magistrate must order his discharge. This is not necessarily the final disposition of the matter, for the district attorney may, notwithstanding the decision of the magistrate, submit the evidence to the grand jury for its action, in felony cases, and in the event of an indictment the defendant is arrested and tried in the higher court for the offense. In cases of misdemeanor, other than criminal libel, the magistrate, within five days after discharging or holding the defendant, must return to the district attorney a statement of the name and address of the defendant, the crime charged, the name and address of the informant, and the names and addresses of all witnesses who were subpoenaed or sworn upon the examination, or who made depositions in support of the information. The district attorney may then either make and file with the clerk of special sessions an information against the defendant, upon which he will be arrested and tried, or may move in that court for the dismissal of the prosecution of the action.

If the charge is a violation of a law or ordinance not classified as a felony or misdemeanor, the magistrate has summary power and jurisdiction to try the case, determine guilt, and sentence accordingly. These offenses comprise charges of disorderly conduct, public intoxication, violation of municipal ordinances, violations of the sanitary code, violations of the sabbath law, vagrancy, insanity, and disorderly conduct.

During the year 1910, in the magistrates' courts of this division, there were arraigned: for felonies, 10,730 persons; for

misdeemeanors, 26,963 persons; for offenses of which the magistrates had summary jurisdiction, 82,761 persons—a total of 118,802 persons arraigned in the eleven magistrates' courts of this division.

These figures are impressive as to the importance of the magistrates' courts, but when we analyze the offenses comprised in the technical classification above mentioned, of which the magistrate has summary jurisdiction, the importance of these courts becomes more manifest. Under the heading of "disorderly conduct" we find: soliciting for purposes of prostitution, fighting in the streets, jostling by pickpockets, disorders arising from strikes, disputes between public hackmen and passengers—in short, anything that tends to a breach of the peace on the public streets. "Public intoxication" means that a person is charged with being intoxicated on the streets or in a public place. To regulate the traffic of the streets, to secure safe and proper buildings, to define and limit the right to use the public thoroughfares, and to secure to the individual the greatest enjoyment of our complex and cosmopolitan existence with the least friction and interference by others, a large number of corporation or municipal ordinances have been adopted, the violations of which are punished in these courts; as are also violations of the sanitary code, which consists of ordinances for protecting and safeguarding the health of the community through proper sanitation and the securing of a healthful food supply.

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In addition to those charged with these offenses, the social derelict, the flotsam and jetsam of city life, the habitual vagrant, the temporary unfortunate who is out of work and unable to provide for himself, the wayward girl from the street and brothel, the intemperate or inhuman husband and father who

has abandoned or threatened to abandon his family, thus making them liable to become public charges, are all brought here, thus presenting to the magistrate social problems, the solution of which has puzzled the wisdom of ages.

How are we to deal with these unfortunates or undesirables? Punishment alone has been found wholly insufficient. A more adequate and rational treatment is imperatively demanded. What shall it be? Never before has the thought of so many persons been concentrated on the consideration of this question. To the magistrate, with the aid of the probation officer, is given such opportunity of observation and investigation as is possessed by no one else. If he is animated by a desire to undertake the solution of some of these problems, the accomplishment of results of lasting benefit to humanity is possible.

With the habitual vagrant little can be accomplished. Temporary residence in the workhouse during the winter months affords a haven of refuge, eagerly sought and earnestly desired. It is hoped that soon the state will establish farms to which this class can be committed, thus being forced to spend time in useful employment. But with the temporarily unemployed, the magistrate, assisted by the probation officer, coöperating with charitable organizations, can accomplish much good, relieving distress and changing a useless encumbrance into a productive and valuable member of society.

The Commission to Inquire into the Courts of Inferior Criminal Jurisdiction in Cities of the First Class (of which I had the privilege of being chairman), recommended, and there has been established, a night court for women and a domestic-relations court, as branches or parts of the magistrates' courts in this division. It was our hope, by the opportunity thus afforded to study the problems presented, and the concentration of the attention and efforts of those who have the ability and are philanthropically inclined, that much good might be accomplished. To the night court girls gathered from the streets and brothels are brought. With the tragedies that result from the social evil it seems, at first, almost hopeless to cope, but the young girl, taken early in her evil life, through wise and sympathetic assistance and oversight by the probation officer, may be

redeemed. The magistrate who sits night after night in this court can instinctively select these cases from the others. There, under our present system, his ability to accomplish results ends. A fine imposed means greater effort to earn money in the only manner open to the prostitute. A workhouse sentence means degradation. Efforts for reformation should go with punishment or no practical result will be accomplished. An adequate system of identification of the offender has been established, that proper statistics may be kept, showing the frequency of the arrest and the effect of the discipline. From the data thus gathered and from experience and study we look to the magistrate to make suggestions of lasting benefit.

To the domestic-relations court is brought the man who fails to provide for his family. Under the old system the wife was compelled to seek redress in the nearest magistrates' court, where, owing to the volume of criminal business, she could of necessity receive but scant consideration. A patient and adequate inquiry was impossible. A temporary disposition of the case was secured, but no sufficient oversight by the magistrate was possible. Now, however, an unfortunate woman may secure a patient hearing in a court freed from criminal environment. The magistrate, through his probation officer, can make a careful investigation into the life of the family, and can frequently discover the cause of the domestic tragedy, and by wise counsel, appropriate provision for support, and careful supervision by the probation officer, re-establish a happy home from the wreck that came before him.

Of the greatest importance to the community is the indirect influence of these courts. A large number of the residents of our city, the humble, the defenseless, and the ignorant, gain their impressions of American institutions from these courts. If they are denied just treatment, they go from the court with a contempt for the law; but if they are impressed with the fact that this is a government of law, and that no one is so high and powerful as to be beyond the power of the law, and none so low and humble as to be beneath its protection, that fair and even-handed justice is secured to the poor and humble, a respect for our institutions and a love of country is fostered that makes for the development of good citizenship.



In the last analysis, the magistrate himself is the one important factor in these most important courts. His opportunity to accomplish a valuable and lasting work for the betterment of society is unlimited. Allow me to quote from the concluding portion of the report to the legislature of the commission to which I have already made reference:

We have pursued our investigations and arrived at our conclusions with an appreciation of the fact that laws alone cannot compel intelligent and conscientious administration. Over and above all in importance is the judge himself, upon whom depends, in greatest measure, the careful and wise disposition of these thousands of cases dealing with people and subjects which touch the city's life at every point.

Trite as the expression may be, we may well repeat that the humble, the defenseless and the ignorant, gain their impressions of American institutions in large degree from these judges and courts, and to them these are the courts of last resort. Whether they shall be convinced that justice is patient and even-handed rests almost entirely upon the treatment they receive from these courts and judges. It is not enough to discharge mechanically, though conscientiously, the daily duty, but the judge should contribute his share to the study and solution of the many complexities of city life in regard to which he has, perhaps, greater opportunity of observation than any other public officer. There should be a spirit of coöperation, a desire to undertake the solution of some of these problems, and we are confident that if this spirit generally animated these judicial officers, they would find a greater tendency on the part of the public to accord to them the respect and confidence which their important and dignified offices and duties should command. It is the hope of the commission that its recommendations, if enacted into law, will be of service to these courts and to the administration of justice. The rest depends upon the judges themselves.

It is exceedingly gratifying to acknowledge that, since the writing of these words, there has been a determined and successful effort to remedy the defects which have been pointed out. To-day the magistrates' court is a dignified judicial tribunal. The dignity and opportunity of the position is realized by most of the magistrates, and they are entitled to an appreciative acknowledgment of the importance to the community of the arduous labor they perform so well.



## EXPERT EVIDENCE IN CRIMINAL TRIALS<sup>1</sup>

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**I**T is a trite saying that no human institution is perfect. This truism is especially applicable to the institution known as expert testimony or opinion evidence.

In any consideration of the subject of medical expert testimony in criminal trials, one is immediately confronted with the great difficulty of finding a working formula or panacea, so to speak, for the correction or cure of evils and abuses arising in connection with such trials, which evils and abuses have been accentuated by the scandalous misuse of expert testimony in a recent murder trial. The unscrupulous tactics resorted to by the defense in that trial afford a striking example of the misuse of medical expert testimony and one which, in the writer's opinion, has done more to bring such testimony into disrepute than aught else in the entire annals of medical jurisprudence.

That existing methods of presenting expert testimony in the trial of criminal causes are not only imperfect, but fraught with evils which tend to bring the medical profession into disrepute with the public, with the bar and with the courts, there can be no question.

If we seek the causes of the evils referred to they will be found: first, in the usage of the courts which permits of the selection of experts by counsel without regard to their qualifications or professional standing, usually the only requirement being that the expert so selected be willing to give an opinion in favor of that side of the case; and second, in the lack of any standard of qualification, fixed by the medical profession, as regards special study and experience in a given branch of

<sup>1</sup> Read at the Conference on the Reform of the Criminal Law and Procedure, New York, May 13, 1911; also, in part, at the annual meeting of the American Medico-Psychological Association, Washington, D. C., May 3-6, 1910.

medical science, which would, at least theoretically, render the would-be witness sufficiently skilled in that branch or subject to constitute him an expert.

The first-mentioned evil could doubtless be corrected by statutory provision, not for the appointment of a "board of official experts," but for the selection of experts by the court in each case; and while it might occasionally happen that a judge in selecting an expert or experts would be influenced by other than meritorious motives, I think, as a rule, the courts could be relied upon to appreciate the responsibility attaching to their action in the matter, and to endeavor to select only men of skill and repute in that particular branch of medicine—men whose opinions would be respected by the bar, the jury and the general public as well.

Indeed, the very fact that the experts had been thus selected would tend to give dignity to their position and weight to their opinions. Such experts should be permitted to have free access to all the evidence in the case, also to examine the accused, and then to state their opinion, whether orally or in writing, subject to cross-examination, the cross-examination to be limited to the matters embraced in the opinion. Their compensation also should be fixed by the court at a rate *per diem*, or by fee, which should be sufficient to induce qualified men to accept such service. Experts selected and paid by this method would be free from suspicion of being biased or influenced in their opinions by pecuniary considerations, while the character and standing of those likely to be selected would tend to establish confidence in the correctness of their conclusions.

In a very able and instructive paper on the subject of medical expert evidence, Honorable Willard Bartlett, Associate Justice of the New York Court of Appeals, says:

In considering the various projects which have been put forward for improving the administration of justice, so far as expert evidence is concerned, it must be borne in mind that no matter what provision is made for the appointment of official experts, the litigants in an action at law cannot be prevented from availing themselves of the testimony of other expert witnesses. To prevent that, and restrict parties solely to the evidence of the official experts, constitutional amendments would

be necessary, involving changes so sweeping as to be antagonistic to the spirit which now pervades our judicial institutions. And, if such changes in the fundamental law were possible, is it at all certain that they would be desirable? I believe that justice in the United States is generally well and honestly administered; but such a thing is conceivable as that a judge might unwittingly appoint incompetent official experts who were anything but representative of the best element in the medical profession. In what position, then, might a physician, sued for malpractice, find himself, if condemned by their opinions and unable to exonerate himself by calling as witnesses his non-official brethren whose testimony would demonstrate that the appointees of the court were wilfully wrong, or ignorantly mistaken? A man may be a good judge of law, and yet be a very poor judge of doctors. I should be sorry to have to be treated by the physicians of several able judges whom I have known in past years, and yet I am certain that in each case his physician would have been the first either of these judges would select for an official or medico-legal preferment within his power to bestow.

Respecting the second source of the evil, that is, the absence of any standard fixed by the medical profession by which the qualifications of a member to give expert testimony may be determined, the cure for that lies in the hands of the profession itself, namely, to fix a standard of qualifications based on special study and experience in a particular branch of medicine which shall entitle a member to rank as an expert in that branch, and at the same time to put the seal of condemnation on the practice which now too frequently obtains of physicians posing as experts upon subjects respecting which they have no special knowledge or experience, relying upon their wit and the ignorance of counsel in medical knowledge to save them from exposure.

The writer fully realizes that the present method of presenting expert testimony is by no means perfect, but he believes it is far better and more practical than any of the visionary schemes which have been brought forward from time to time by medical societies, by bar associations, and even by certain alienists; such, for instance, as the appointment of a "board of official experts" by the courts, or by medical societies, or by the governor of the state.

In the writer's opinion it would be difficult, if not impossible, to devise any satisfactory method to supplant the present one, short of a change in our federal constitution. This opinion is sustained by many, if not most, of the judges, who hold that a defendant on trial has a constitutional right to present any proper evidence that might aid him in his defense.

It would doubtless simplify matters, were it feasible to do so, to provide that questions of expert opinion should be passed upon by the court instead of a jury of laymen, who are not supposed to be familiar with the intricacies of psychological medicine. The spectacle of a jury of laymen being called on to decide as to which of the opinions of opposing expert witnesses respecting an obscure and difficult question of disease is correct, is a *reductio ad absurdum* which has been too often pointed out to call for more than passing mention here. This practise, unfortunately, is one that cannot be abolished, for the reason that our federal constitution confers upon every citizen when charged with crime the sovereign right of trial by a jury of his peers.

Respecting the proposition to provide for the appointment of a "board of official experts," whether by the governor of the state, by the courts, or by a state commission in lunacy, it is the writer's opinion that none of these methods would be desirable or acceptable, either to the medical and legal professions, or to the public, for the reason that it would savor of class legislation, which is against sound public policy. Furthermore, the prospective advantages through professional prominence and pecuniary gain, whether in fees or in salary, which such appointment would offer, would lead incompetent and unworthy members of the profession to seek appointment thereon through partisan or other questionable influences. Moreover, such a board, even if fairly representative in its make-up, would be a ready target for unfriendly or hostile criticism by their less fortunate brethren in the same line of practise who might, whether justly or unjustly, regard themselves as being discriminated against. Then, too, it would require either a very large board or numerous boards to provide a sufficient number of experts in the various branches of medicine, surgery and chemistry in which medico-legal questions arise. Says Mr. Justice Bartlett, in the paper referred to:

There is not likely to be any radical change in a matter of legal procedure like this, without the approval of the bar, and I doubt very much whether the bar would approve any legislation which would enable the courts or any other appointing power to create a privileged class of expert witnesses.

For the reasons herein set forth, it would seem to the writer that the most practical solution of the difficulty would be to make statutory provision for the appointment by the court of, say, from one to three experts whenever occasion arises, the law to provide that only physicians of repute in the particular branch of medicine to which the question for expert opinion relates shall be appointed, these experts to have full and free access to all the evidence in the case, as well as to the defendant, for the purpose of examination, and then to submit to the court, for transmission to the jury, a written report, setting forth their conclusion, together with the facts in evidence on which such conclusion is based, the cross-examination of the experts to be restricted to matters embraced within their direct statement of facts and opinion, and their compensation to be fixed by the court. The writer is well aware that lawyers would raise objection to this manner of selecting experts, on the ground that a defendant's constitutional right to select his own witnesses, and to call any witness whose testimony would tend to sustain his case, is a right which can be neither taken from him nor abridged. This objection, however, would be met by the fact that counsel would still be permitted to call experts in addition to those selected by the court; though it is safe to say the opinion of the official or court experts would far outweigh any differing opinion that might be offered by experts selected by counsel, while, needless to say, this method of selecting experts would always be satisfactory to prosecuting attorneys.

It has been suggested that the most satisfactory way to deal with criminal cases, especially capital ones, in which insanity is pleaded as a defense, would be to keep the question of insanity out of the case entirely during the trial, and to allow the jury to pass only on the question of the guilt or innocence of the accused, irrespective of his mental condition; then, if the defendant is convicted, let the court, either of its own motion or at the



request of counsel, appoint a commission of competent alienists to determine his mental condition. Such a commission could be relied upon to reach a sound and harmonious conclusion. The writer does not pretend to say that this method would be feasible, but it would at least seem to offer an improvement on the present method of determining the mental condition of a defendant, which puts upon a jury of laymen, who presumably are not familiar with the phenomena of mental disease, a responsibility which they should not be called upon to assume. If the function of the jury were restricted to a finding on the facts—that is, a decision as to whether the defendant committed the act as charged—and if subsequently the question of his mental condition were determined by competent alienists appointed by the court, it is believed that the finding of such a commission would be accepted by the public, both lay and medical, and that there would be no danger of a miscarriage of justice. If this method were feasible under the constitution it would seem to furnish the best solution of expert testimony in criminal cases in which the mental condition of the accused is in issue.

It is safe to say that the trial of Thaw would have occupied but a few hours if the question of his mental condition could have been excluded from the consideration of the jury and left to the determination of the court, aided by a commission of competent alienists. A few days at most would have sufficed for this last inquiry, and the result would have been precisely what was reached after two farcical trials with all their disgusting details, which lasted for many weeks at an enormous expense to the family of Thaw and to the state of New York. Had this method of procedure been adopted, Thaw would have been placed precisely where he now is.

It has been suggested that this proposed change in our criminal-law practise would be less objectionable if juries were never permitted to render a verdict of guilty, but were required simply to determine if the defendant did or did not commit the act charged in the indictment, and that the indictment itself might omit all words which brand the defendant as a criminal.

Surely if such a system were established it would be easier



to stop eloquent and tearful advocates from scaring juries by talking about consigning a defendant to state's prison, to the gallows, or to the electric chair; while at the same time it would tend to mitigate much of the scandal which too often arises in connection with the plea of insanity as a defense to an indictment for crime.

#### WHEN DOCTORS DISAGREE

In connection with this branch of the subject the writer would take occasion to suggest that it is the duty of the medical profession to raise its voice in solemn protest against the tendency which has lately grown up to heap upon it ridicule and abuse because "doctors disagree," and against the idea that all doctors who take the witness stand are dishonest. As a matter of fact, doctors are no more prone to disagree than are any other class of individuals where matters of opinion are involved.

On the other hand, lawyers are notorious for their disagreements. In fact, in every case that is tried in court we find the contention of counsel on one side diametrically opposed to that of the other side; and this, too, on substantially the same state of facts. Then, too, judges are noted for their disagreements. The higher courts frequently reverse the courts below, clear up to the court of last resort; and it is safe to say if there were a still higher court it would be found overruling the court of appeals. How frequently, too, we find the body of judges constituting the appellate courts divided in the decisions they render, the issue being decided oftentimes by a bare majority of one. And yet nobody would think of suggesting that these judges are dishonest simply because they happen to disagree.

Respecting the indiscriminate condemnation of medical expert testimony in which the courts, the public press, and to some extent the medical press, are wont to indulge, Mr. Justice Bartlett, referring to the common assumption that courts and juries would be sure to get at the truth if the expert witnesses on one side could only be induced to agree with the expert witnesses on the other, says:

I desire to express my dissent from the sweeping condemnation of

medical experts in which the courts so often indulge. There is scarcely a case where expert evidence is taken, in which some of the experts are not perfectly honest. They do not deserve denunciation merely because other experts are dishonest, or because it is often difficult to tell the false from the true. The medical profession itself must help us to make the distinction between the two classes easier. However objectionable are some of the aspects of medical expert evidence, it cannot be dispensed with in the administration of justice. Let us remedy the evils, but, while we are endeavoring to do so, let us avoid that exaggerated denunciation which is calculated to convince the community that no surgeon or physician who takes the witness-stand as an expert is worthy of belief. Such teaching is a libel on the most unselfish profession in the world.

Mr. William A. Purrington, an eminent member of the New York bar, and one of large experience in medico-legal matters, in a recent paper referring to the disagreements of judges, whom he characterizes as

that great body of experts who rarely if ever go upon the witness-stand, yet are always under a continuing oath, and in every case from the facts before them render their opinions as to the law,

says:

When they give an opinion, whether it be right or wrong in our opinion, it is of binding force until set aside; and that is more than can be said of yours of the faculty, or ours of the bar. I have sometimes wondered whether those judges who have been most denunciatory of the differing conclusions at which reputable medical experts have arrived upon the facts in evidence, have reflected that they, too, belong to a body of experts in the law, whose members often differ, very honestly and ably, in drawing conclusions, even from agreed facts.

Mr. Purrington then goes on to cite in illustration of his point

the recent medical case of *The People v. Hawker* (14 App. Div. 188; 152 N. Y. 234; 170 U. S. 189) wherein the facts were agreed upon, and the only question involved was one of law, whether a statute forbidding one convicted of felony to practise medicine could apply to a licensed physician so convicted prior to its enactment; in other words,

whether the statute was *ex post facto*. The trial judge decided negatively. The appellate division of this department, by a vote of three to two, reversed him; the court of appeals in turn reversed the appellate division, two of its judges dissenting; and finally, the Supreme Court of the United States, after two arguments, affirmed the court of appeals, three of its members dissenting. Surely no one would presume, because of these differences of opinion, to doubt for a moment the ability, the learning and the absolute honesty of these various experts of the law; and it is equally manifest that the frequent differences of opinion among medical experts—the only class we are now considering—should not of themselves alone justify the criticisms so freely made.

Mr. William Travers Jerome, in a recent public utterance, declared:

No man has had more experience with experts than myself during the eight years I was district attorney, and during that time I recall only one man whose testimony was radically dishonest. Only one of these cases received great public attention, and that was on account of the scandals connected therewith. These scandals were not, however, save with one exception, due to dishonest expert evidence, but to judicial incompetency. It does not follow because there are alienists who lie on the witness stand that all medical expert evidence should be abolished, any more than that because some lawyers coach witnesses to a point that amounts to subornation of perjury, the conduct of criminal cases should be left entirely to the judge. I have referred to the Thaw case and you all know whom I mean when I say that there was one man who testified on that occasion, who, in view of his testimony in that case, and in view of his evidence since and his own written report, would be expelled from the profession, if you gentlemen had the power to disbar him. I may say that in every case during my term of office the opinion of the experts retained by the state was justified by the subsequent clinical history.

From a recent report of a committee of the American Medico-Psychological Association on medical expert testimony, of which committee the writer was a member, it appears that

the number of alienists who figure in homicide trials or for that matter in medico-legal cases of any description is insignificant when compared with the cloud of medical witnesses giving expert testimony in cases

arising from personal injury which are largely responsible for the flood of litigation which is overwhelming our courts. Many of these witnesses also are general physicians whose opinions are not based on special accomplishment in any single branch of medicine. Therefore, there necessarily must be far more opportunity for defective medical testimony to be offered in such cases than during criminal trials in which the question of insanity is involved.

Nevertheless it is the physician in mental diseases whose evidence has to bear the brunt of public criticism and abuse because of the importance of the issue and the wide publicity given to details of murder trials of which his testimony is a conspicuous feature. The physician who is called to testify on purely medical or surgical questions is brought into no such prominence. On the other hand, all eyes are on the alienist and so great is the indignation and desire for retaliation on the murderer that except in the most obvious cases of insanity any medical testimony which favors irresponsibility is sure of hostile scrutiny from the start no matter how sound and unbiased it may be.

The alienist on the witness-stand faces, therefore, a great responsibility, and a single dishonest physician may bring more discredit upon himself and his medical brethren because of this prominence than a dozen unscrupulous medical witnesses in accident cases.

This unfortunate practise of denouncing medical experts has caused many members of the profession—both physicians and surgeons—to decline to take the witness-stand in cases where their testimony would be most valuable and important in furthering the ends of justice. If this wholesale denunciation is persisted in, it will tend eventually to deter reputable physicians from offering expert testimony in courts. Expert testimony will be abandoned to pseudo-experts and charlatans who are willing to swear to anything for a consideration.

It scarcely need be said, that no honest physician will appear as an expert in either a civil or criminal case, on a contingent fee, or accept a retainer without a definite understanding that the retainer will in no way influence his unbiased, honest opinion.

#### THE INSANITY DODGE

One of the popular delusions of the day, if I may so term it, is that the plea of insanity—the so-called “insanity dodge”—is frequently successfully used in the defense of sane criminals.

While it is true that a trumped-up defense of insanity is frequently offered in criminal cases in which there appears to be no other avenue of escape, the fact is that a dishonest plea of insanity very rarely succeeds. During an experience of nearly forty years in the observation of such cases I have personally known but two instances in which a sane criminal escaped conviction on the plea of insanity.

Whether a lawyer is ever justified in defending a client on the ground of insanity when he knows that client to be perfectly sane, is an ethical question which may properly be left to the legal profession, though I venture to say that lawyers have been disbarred for offenses of lesser gravity than that.

Quoting again from the report just referred to:

The dangers to the cause of justice that are supposed to lie in the insanity defense for crime are without question greatly exaggerated. Too much has been taken for granted and little or no inquiry made as to the actual results of its operation. There is no way by which we can approach a more accurate estimate of the number of homicidal criminals who have escaped their just deserts by this means than by ascertaining how many sane criminals of this class have been committed as insane to hospitals for the insane in a given period. In reply to inquiry on this point the superintendents of 75 out of 108 hospitals in this country and Canada, with a population of over 83,230 inmates, report but seven criminals who had been charged with homicide who had been improperly adjudged insane and sent to hospitals for the insane during the past two years. Superintendents of special institutions for the criminal insane report that very few criminals of any kind are wrongly adjudged insane and committed to their institution—not a dozen in twenty years according to Dr. Lamb of the Matteawan institution for this class—while the period of hospital residence of discharged cases shows that they underwent a longer confinement as insane patients than would have followed had the same men been convicted and sent to prison.

The real injustice in this matter is that the insanity defense is not by any means employed as often as it should be. In other words, much more harm results from lack of expert testimony than from its defects. There are far more instances of the commitment of insane persons to prison for want of preliminary examination and recognition of their mental condition than there are of the commitment of sane criminals



to hospitals for the insane. Many so-called criminals are convicted and sent to prison only to be found insane and transferred to the asylum for criminal insane. Such patients are wholly out of place in prisons where they are not only stigmatized as felons and deprived of the proper and humane care that is due, but are made worse by prison discipline, while the difficulty of enforcing prison rules in their cases greatly interferes with proper administration.

Dr. Allison has reported that 53 per cent of 179 insane persons under his charge at the asylum for the criminal insane at Matteawan who had committed murder were received from prisons to which they had been sentenced for life. Their histories and the character and course of the disease showed that at least 40 per cent of such convicted cases were insane at the time the crime was committed. In many instances the fact of their insanity was not recognized at the time of their trial, but in others the plea was set up and failed. Whenever this matter has been made the subject of inquiry this has been the story in all large prisons and institutions in which the criminal insane are received, both in this and in foreign countries. The lowest estimate from authoritative sources, and a most conservative one, is that ten insane persons are made convicts to one malefactor who escapes punishment on the plea of insanity.<sup>1</sup>

It is also a prevalent notion that it is an easy matter to simulate or feign insanity successfully. The fact is that one could scarcely undertake a more difficult rôle. To succeed in shamming insanity so as to deceive a skilled observer, one would require not only to be a consummate actor but to be well versed in the symptoms of the different forms of mental disease and to possess unusual powers of endurance. The average criminal being entirely ignorant of the symptoms of insanity, usually overacts his part and fails to present a consistent clinical picture of any form of that disease. The "symptoms" he presents to the eye of the experienced alienist are usually a medley of symptoms in which he mixes up the various forms of insanity indiscriminately. Furthermore, his "symptoms" as a rule subside when he believes he is not under observation. As a consequence I have no hesitancy in saying that it is practically impossible to simulate insanity so as to deceive a skilled observer, provided he has sufficient opportunity to observe the case.

<sup>1</sup> MacPherson, *Mental Affections*, p. 374.



There is another point in connection with this subject which, in the writer's opinion, should receive the attention, not only of this conference, but of the medical profession as well, namely, the practise of certain medical men—mostly pseudo-experts—acting as medical adviser to counsel and as expert witness in the same case. The spectacle of a medical man sitting in court, at the elbow of counsel, actively engaged in taking notes and preparing or suggesting questions for the latter to put to the witness, also framing questions for the cross-examination of a fellow practitioner and otherwise openly assisting counsel in his efforts to break down the opposing side, and subsequently taking the witness-stand for that purpose, is, to say the least, questionable. If a physician is to appear as an expert witness, he should keep away from counsel while in court and take no part in the conduct of the case which would put him in the attitude of assistant counsel or of a biased or interested party. In the first trial of Thaw the writer was selected by the district attorney to assist him in the preparation of the medical branch of the trial, a service which he accepted with the distinct understanding that he would not appear as a witness in the case.

#### THE HYPOTHETICAL QUESTION

The hypothetical question is a very difficult proposition with which to deal, especially so far as relates to any improvement or proposed modification of existing rules of practise relative thereto. The rules of evidence provide for the hypothetical question, and the courts have held that while such question must contain nothing that is not contained in the evidence, they do not prohibit the omission of any facts in evidence which counsel may in their discretion see fit to omit. Hence, it frequently occurs that counsel sifts and omits from his hypothetical question every important fact in evidence which, if incorporated therein, would tend to weaken or discredit his contention, and he is prone to include in his question only such facts as he thinks will tend to prove his case. Consequently, the hypothetical question usually is a one-sided affair. One great objection to the hypothetical question is that, as a rule, it is not at all what it purports to be. In other words, if it repre-

sented precisely what is contained in the evidence it would not be a hypothetical case at all, whereas, if a genuinely suppositious one is presented, "the less it resembles the actual case the less will it enlighten the jury." The writer has frequently suggested, and sometimes insisted, that the question to be submitted to him should embrace a fair résumé of the whole evidence, and when this plan has been followed he has usually found that he could answer the question thus constituted as consistently and to the same effect as he could have answered what might be termed an *ex parte* question. This, it seemed to the writer, has tended to strengthen his testimony in the estimation of the court and of the jury, and at the same time to relieve him from appearing to be an unfair, one-sided and partial witness. If the rule required that the essential evidence on both sides should be included in the hypothetical question, it would not only save the medical witness from embarrassment, but more nearly fulfil its true function of enlightening the jury.

#### THE LEGAL VERSUS THE SCIENTIFIC DEFINITION OF INSANITY

The legal definition of insanity as a test of responsibility for criminal acts, that is, the so-called "knowledge-of-right-and-wrong test," presents a feature of the administration of the criminal law in which the legal profession has made little or no progress for more than half a century, or since the legal definition of insanity was formulated by the English judges in their decision in the celebrated *McNaughten* case in 1843. In fact the criminal code of the state of New York to-day defines insanity in substantially the same language as that used by the judges in the *McNaughten* case, namely:

A person is not excused from criminal liability as an idiot, imbecile, lunatic or insane person, except upon proof that, at the time of committing the alleged criminal act, he was laboring under such a defect of reason, as either (1) not to know the nature and quality of the act he was doing; or (2) not to know that the act was wrong.

Medical science can hardly accept this "knowledge-of-right-and-wrong test" as regards responsibility for crime. But, as this is the law of the state of New York and of many other

states in the union, we are obliged to abide by it. In fact, as medical experts, we have nothing to do with the law. The question of legal or criminal responsibility is one for the court or jury to decide. The function of the expert is simply to determine, if possible, the mental condition of the accused at the time the act was committed—a purely scientific question.

Every alienist knows perfectly well that this so-called legal definition is unscientific and that in this matter the law has not kept pace with the progress of medical science. Those who are familiar with the phenomena of mental disease know perfectly well that in a large majority of cases in which the plea of insanity is offered as a defense to an indictment for crime, the accused knows the difference between right and wrong in the abstract—a large majority of the so-called “dangerous” or “criminal” insane being paranoiacs. We know that paranoiacs as a rule converse coherently and plausibly, and that they reason logically respecting their delusional ideas, but that they always reason from wrong premises, the mental condition being one of gradually developed delusional ideas of the systematized variety, without marked mental deterioration or clouding of consciousness. So that, in most cases, the question with medical science is, not whether the individual knew the nature and quality of the act he was doing, and knew that it was wrong, but whether he had the power to control his actions and to resist the impulse to do the wrong, or, in other words, whether he was actuated by delusion which supplied the motive, impelling him to do the act.

If every form and stage of mental disease were invariably attended by a loss or suspension of the knowledge of right and wrong, such as usually occurs in extreme types of mania, melancholia, parietic dementia, *etc.*,—forms and stages of the disease which are usually characterized by mental aberration so marked as to bring them easily within the ken of unskilled observers who would readily recognize the symptoms which in themselves furnish presumptive evidence of a lack of power to distinguish rationally between right and wrong—no valid objection could be raised to the present legal test of insanity, wrong in principle though it be, for the reason that its practical effect, as applied to the class of cases referred to, would be to es-

tablish irresponsibility in substantially every case, regardless of the nature of the act committed. Unfortunately, however, but a small percentage of the insane who come within the jurisdiction of our criminal courts belong to the types of insanity referred to. These classes of persons, being usually not homicidal, seldom commit or attempt to commit homicide, or what is technically known as crime against the person. In other words, such persons do not belong to the "dangerous insane;" consequently there is little or no difficulty in determining the question of their responsibility, for the reason that they readily fall within the legal conception and definition of mental disease. It is the obscure and doubtful cases that so frequently puzzle our courts of criminal jurisdiction, and these are drawn almost wholly from the ranks of the paranoiacs; and this class, as we all know, frequently commit crimes from motives similar in character to those which actuate sane persons, namely, revenge, vindication of personal honor, defense of life or property, and the like.

But if we seek the basis of these motives we shall find that, unlike the motives of the sane, they are not founded on reality, but are the offspring of a diseased or disordered intellect, a psychopathic state which has deranged the psychical apparatus, so to speak, and left it awry, even though the logical apparatus remains intact. The paranoiac is prone to premise falsely and to misinterpret morbidly the conduct and motives of those about him. While he may reason logically, he reasons from wrong premises and in a way that a sane man would not do.

Such being the case, it frequently happens that, under the requirements of our criminal code, the expert is put in the false position of testifying in effect that a defendant was legally sane when he committed the act, that is, that he knew the nature and quality of the act and knew that it was wrong, when as a matter of fact he knows that the defendant was insane and irresponsible, according to the teachings of medical science.

From the time that Lord Hale undertook to define the exact extent to which the mental movements were influenced by insanity, and to indicate the consequent effect of insanity in impairing the responsibility of its victims, there has existed, in both

lay and medical circles, a wide diversity of opinion as to how far insanity should be held to absolve from criminal responsibility. As a result of his investigations, Lord Hale concluded that while the milder forms of insanity might not be sufficient to excuse one from responsibility for criminal acts, a sufferer from the severer types of the disease would be excusable for any crime he might commit under its influence. Subsequently, in 1843, the English judges, in response to questions put to them by the House of Lords, in connection with the McNaughten case, formulated a definition or test of insanity which was substantially the same as the one put forth by Lord Hale. In the language of the learned English judges:

To establish a defense on the ground of insanity, it must be clearly proved that at the time of committing the act, the accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong.

From the time this judge-made law was promulgated down to the present day our criminal courts, with their traditional regard for precedent, have generally accepted it blindly and propounded it to juries in almost identical language, notwithstanding the emphatic protest of medical science that such test is in direct conflict with its teachings and false in its application to the mentally unsound. As before stated, the revised code of criminal procedure of the state of New York, section 21, defines insanity in practically the same terms as those used by the English judges in the McNaughten case. Thus it appears that our lawmakers, blindly following the dictum of Lord Hale and his successors on the English bench, and ignoring the teachings of science, have undertaken to determine by statutory enactment what insanity is and to define the conditions of responsibility in mental disease by declaring in law what shall be rather than what is, and have thus given us a test which is based on a misconception of the true nature of insanity, and which is so narrow in spirit and so untenable in reason that every experienced alienist must regard it as artificial, arbitrary and fraught with danger to humanity and to the ends of justice. "The true test of irresponsibility," says



Forbes Winslow, "should be, not whether the party accused is aware of the criminality of his actions, but whether he has lost all power of control over his actions." "Make the man's power of controlling his actions the test," says Clouston; "with that view every medical man will agree."

Hence, it would appear, if medical science is correct, that the real question of fact for the jury to determine in criminal trials where insanity is alleged, is, did the accused at the time he committed the offense with which he is charged have sufficient mental capacity to appreciate *rationaly* the nature and consequences of the act he was committing, and, if so, had he sufficient power of will to enable him to choose between doing it and not doing it? It must be admitted that a correct solution of this question, involving, as it does, human life and liberty, is of vital importance; and inasmuch as it relates directly to disease, the facts upon which its solution depends can properly be interpreted for the jury only by competent medical testimony. If this were done, it is believed that much of the conflict of opinion in our law courts respecting the question of responsibility in criminal cases where insanity is offered as a defense would disappear.

#### RESOLUTIONS

At the conclusion of his address, Dr. MacDonald offered the following resolutions, which, at the suggestion of the presiding officer, in view of the importance of the matters involved, and the short time available for discussion, were referred to the Executive Committee of the newly formed New York Society of Criminal Law and Criminology for proper action:

*Resolved:* 1. That the proved rarity of wrong acquittals on the ground of insanity is the strongest evidence that the abuse of the insanity plea in criminal cases has been unwarrantably exaggerated.

2. That the insanity plea is not by any means raised as often as it should be, to prevent the frequent miscarriage of justice arising from the conviction and imprisonment of insane persons whose true mental condition has not been recognized.

3. That the abuses which have crept into the method of presenting medical expert testimony have been largely the result of established



legal tests and procedures, although their correction does not require radical change in the laws.

4. That whenever possible the medical witness should not testify unless he has had an opportunity to make both a mental and a physical examination of the person in whose behalf the plea of insanity is raised.

5. That we consider the hypothetical question as ordinarily presented to be unscientific, misleading and dangerous to medical repute, and that the essential evidence on both sides should always be included in its presentation to medical witnesses.

6. That in all criminal cases absolutely equal rights should be accorded the medical witnesses for both the prosecution and the defense for the examination of the person alleged to be insane.

7. That in our judgment the judiciary should by legal enactment be allowed more latitude in enlightening the jury and enabling it to comprehend the nature and meaning of the medical testimony laid before it.

8. That we advocate a freer use of appointments of commissions by the court.

9. That a period of hospital observation of all persons committing crimes in whose defense the plea of insanity has been raised is by far the best method yet devised for securing impartial and accurate opinions, silencing popular clamor, avoiding prolonged and sensational trials and saving expense to the state ; also that we advocate the enactment in every state of laws similar to those of Maine, New Hampshire, Vermont and Massachusetts, providing that such persons may be committed by the court to a state hospital for the insane, there to remain for such time as the court may direct pending the determination of their insanity.

10. That it is the sense of the conference that it is subversive of the dignity of the medical profession for any of its members to occupy the position of medical advisory counsel in open court and at the same time to act as expert witness in a medico-legal case.

11. That we regard the acceptance by a physician of a fee that is contingent upon the result of a medico-legal case as not in accordance with medical ethics and derogatory to the good repute of the profession, and advocate the regulation of the practise by legislation.

12. That we are in favor of any legislation that will secure a definite standard of qualification for medical men giving expert testimony.

## THE EFFECTS OF THE TWICE-IN-JEOPARDY PRINCIPLE IN CRIMINAL TRIALS<sup>1</sup>

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SOME months ago, during the strike of an express company's employes, a man who was passing through New York for the purpose of going on a shooting expedition was set upon as he passed along the street and was stabbed to death, having been mistaken for a "strike-breaker." Certain of the striking employes were arrested, and the case was brought to trial against the man against whom there was the strongest evidence. That evidence consisted in large part of a confession made by him to one of the assistant district attorneys of the county. On the occasion of the making of the confession a stenographer was present; the accused was warned of his rights, and was informed that whatever he said might be used against him, no threats nor promises being made to him. When the case came to trial the confession was offered in evidence, and the trial judge refused to receive it. The district attorney trying the case asked his reason and he said: "I do not think it is proper; I simply will not receive it." Though numerous cases directly in point were cited, the ruling stood, and the confession was ruled out. The remaining evidence against the defendant was not such as to warrant a conviction, and the jury acquitted—and it could not be blamed for it under the circumstances. That crime went absolutely unpunished.

How did that result arise? The judge who tried the case was a conscientious man, and did not intend to inflict an injury on the prosecution's case, but he did have the idea that even though he thought the confession admissible evidence, it lay in his discretion to say whether or not he would let it in. But why was that in his mind? Because of the doctrine that has come

<sup>1</sup> Read at the Conference on the Reform of the Criminal Law and Procedure, May 13, 1911.

down to us from centuries ago, which says that "no man shall be put twice in jeopardy for the same offense."

You may ask why that doctrine had anything to do with this ruling; or why the judge believed that he had the discretion to admit or reject this evidence? It came about in just this way: because a man cannot be put twice in jeopardy of life and limb, if he is acquitted he cannot be re-tried; and because after acquittal he cannot be re-tried, the people cannot take exception to any ruling made by the judge which is against the prosecution; nor can the people raise any question whatever on appeal. Therefore in going into a criminal trial the people are absolutely defenseless in the hands of the trial judge; no ruling made by him against the prosecution can in any way be revised.

By long continuance of this practise the idea has grown up in the minds of many judges that in the trial of a criminal case, the litigation is not simply a lawsuit, as between two parties litigant. In the trial of a civil suit, where one lawyer represents one party and another lawyer represents another, the minds of these judges would work perfectly fairly and judicially, and they would be far from prejudicing one party or the other by any ruling. But when it comes to criminal action, or prosecution, some seem to go to such lengths in safeguarding what are deemed to be all the rights of the defendant that the prosecution is seriously handicapped. They seem to have the idea that they may simply use their discretion as to admitting evidence against the prosecution which should not be admitted, and keeping out evidence in its favor which ought to be admitted.

If we consider the origin of the twice-in-jeopardy principle, we shall see that at the time it was enacted nothing could have been fairer and more reasonable; but it was never meant to apply to any such situation as the present one, in which the second-jeopardy theory prevents re-trial of a defendant, though his acquittal be reversed in proper manner on appeal.

The rule arose at a time when a defendant was under most extraordinary disabilities, when he ran a terrible risk in any trial for felony. It arose at a time when every felony was punishable by death; when there were no prisons in our present sense, but only prisons for detention for trial. It arose in an

age when a defendant was not entitled to the benefit of counsel, and no lawyer appeared for him. It arose in an age when he could not take the stand in his own behalf, no matter whether his whole case depended on his own evidence. It arose—and this is most important—at a time when neither side could appeal. All of these things being so, the justice of the rule is evident. When a man had gone through such an ordeal of death as that, common humanity required that he should not again be put in jeopardy. Yet further, as neither side could appeal, the law said to the prosecution, "If this man is acquitted, the law will not allow you to keep on trying him, over and over again, until you get a verdict that suits you." It was meant to prevent such oppression. As was well stated in an early case in this state, the object of the rule was to prevent juries from being discharged by the prosecuting officer from motives that were oppressive, or merely to give him a chance to repair mistakes.

Not only was the rule designed to prevent oppression, but it was designed to put both parties on an absolutely equal footing; and it is almost grotesque to see how it has now been changed to put the parties on an absolutely unequal footing. As neither side could appeal, it follows that if the defendant was convicted, there was no way in which he could obtain a new trial; he was promptly hanged. Consequently it was held that as the defendant could not get a new trial if convicted, he should not be tried again if acquitted; one litigation was to settle the whole question.

Observe the present change. Every one of the disabilities previously mentioned has been removed. The defendant is no longer, except in cases of murder in the first degree, punishable with death. He is entitled to counsel, and he is entitled to the names of the prosecution's witnesses; he is entitled to the evidence in the case against him, and he has the right to cross-examine the witnesses for the prosecution; while the prosecution is not entitled to know anything of the defense that the defendant intends to offer. He is also entitled to take the stand in his own behalf; and lastly, he has been given the right of appeal; while the people have not been given that right. When we realize that the second-jeopardy rule was designed to

put both parties on an equal footing, then, considering that this rule has been applied to prevent re-trial of a defendant after a reversal of a conviction only, the present situation appears extraordinary, to say the least. The result is that the people are without any remedy whatever, no matter what ruling be made during the trial, no matter what misconduct be indulged in by defendant's counsel. And to that fact, in a very large measure, do I attribute the ineffectiveness of many of our criminal trials.

This rule was incorporated into the constitution of the United States and of the state of New York; but at the time that it was incorporated into those two instruments, the defendant had no right of appeal, and I have no idea that the framers of those constitutions supposed that the rule would be invoked to prevent the people from taking an appeal if that right should be granted to the defendant. The defendant's right of appeal in this state was apparently established by the laws of 1801, which enacted that in a capital case it was to be granted by grace of the chancellor, and in other cases as matter of right.

As against the defendant's right of appeal, the state at the present time is without the power to appeal in any way, except in two contingencies, which merely raise questions of law, *viz.*, from a judgment sustaining a demurrer and from an order in arrest of judgment. If an indictment is dismissed, the state has no appeal. In a recent case a man pleaded guilty. Shortly after this plea was entered, the presiding judge, without consulting the district attorney, called the defendant to the bar, had his plea of guilty withdrawn and his plea of not guilty reinstated, and then dismissed the indictment against him, without giving any reason. The people were absolutely without remedy. If a verdict of guilty is returned in a case, the presiding judge has it in his absolute power to set it aside and order a new trial. No matter what his grounds are, no matter how strong the case of the people may have been, there is no remedy.

I shall next state three or four cases that illustrate the practical workings of this rule. I do this, disclaiming any improper motives as actuating any judge, but merely to illustrate the idea that some judges have, that they are to exercise absolute discretion, when it comes to the people's case, as to admitting or



rejecting evidence. These are not special cases; they have simply been noted as they came up in the day's work.

On one occasion the district attorney handed to the presiding judge certain requests to charge the jury. They were handed back with the remark that the district attorney had no right to make such requests and that the court would not receive them.

In a murder case, for the defense, specific acts of violence on the part of the deceased were allowed to be put in, instead of merely his reputation for violence. This reduced the verdict to manslaughter, although the deceased was shot in the back, while running away.

In the case of a man who was being tried for maintaining a pool room, after the jury went out the judge announced to the rest of the panel that his charge to the last jury was not the law, but was more favorable to the defendant than the law was; and that he had charged as he had because this case was the first to come up that term under the act.

In another case the defendant's attorney told the district attorney that at the close of the people's case he intended to have his client plead guilty, as he wished the case to go in against him for some reason. Before the people's case was half done, the judge directed a verdict of acquittal, although the code of criminal procedure provides that an acquittal can be directed only after either side has closed its evidence. The same thing was done in another case, brought by the Gerry Society, where a verdict was directed after one witness had been heard, and before the people had put in their case. On one occasion a judge announced that he should direct an acquittal in any case which depended upon the uncorroborated testimony of a police officer, no matter whether his credibility was impugned or not; he would let no such case go to the jury.

The following case well illustrates the mental attitude of some judges in failing to recognize that a criminal prosecution is a lawsuit in which both parties have equal rights under the law. Four Italians were jointly indicted for burglary, and two of them elected to go to trial together. The assistant district attorney asked the officer who made the arrest how he happened to be in that vicinity, it not being his regular post. The officer



replied that he was watching a building which had previously been blown up by a "black hand" bomb. Thereupon the court reprimanded the officer for making the answer, said it was improper and prejudicial to the defendants' rights, and directed their acquittal. The other two defendants were subsequently tried and convicted. The statute authorizing the court to direct an acquittal in a criminal case (section 410 of the code of criminal procedure) provides: "If at any time after the evidence on either side is closed the court deems it insufficient to warrant a conviction it may advise the jury to acquit the defendant, and they must follow the advice." In this case the acquittal was directed before the evidence on either side was closed, and there was no question whatever of the sufficiency of the evidence to convict. Now, even if it be assumed that the question and answer were improper, the court could have struck out the answer and charged the jury to disregard it; or the court could have withdrawn a juror, declared a mistrial and directed the case to be submitted to another jury. But the court did neither of those things; it directed a final judgment to be entered in favor of one litigant and against the other, in total disregard of the law.

The effect of the inability of the people to take an appeal is most unfortunate upon that part of the bar who appear for defendants in criminal cases. In a civil case it is to the interest of the attorney for either side to inject no improper evidence into the case and to exclude no proper evidence, so as to preserve a record which will be sustained on appeal. But in a criminal case, as the defendant's attorney knows that the people can take no appeal, it is to his advantage to exclude all the evidence favorable to the people, no matter how competent, and to get in evidence all testimony favorable to the defendant, no matter how incompetent, and to resort to any trick, subterfuge, or unprofessional display which will serve to facilitate an acquittal—the professional conduct of the defendant's attorney not being in review by any appellate court. This freedom from all restraint upon the defendant's attorney is also accountable for much of the ineffectiveness of our criminal trials and for those features which have tended to bring them into disrepute.

But one matter now remains to be discussed, and that is, what reasons can be advanced against giving the people the right of appeal for errors committed upon the trial. Apart from generalities against "any invasion of this palladium of our liberties" indulged in so often by those who fail to appreciate the original purpose of the second-jeopardy rule, only one argument has ever been advanced meriting serious consideration. The objection has been made that if the people could appeal, the poor defendant would be unable to respond to the appeal, which would necessarily go by default against him.

This is a matter, however, easily remedied. There would be no difficulty in the court's assigning to an impecunious defendant counsel to conduct his appeal. The expense to the defendant would be very small, as the necessary printing of the record has to be paid for by the appellant. The necessary disbursements which the defendant would have to incur would be paid for by the state.

Again, if it be objected that this would be a serious financial burden, the reply is obvious. If once the law were on the statute books granting the people a right of appeal, the trial of criminal cases would be so improved in tone that the right would have to be resorted to but seldom. District attorneys are human, and they receive no extra compensation for work on appeals, nor are they desirous of drawing upon their allotted funds uselessly. They would probably be more open to criticism for refusing to go to the labor and expense of taking an appeal where abstract justice demanded it than they would be for taking unnecessary appeals.

Should the right of appeal be granted to the people, the defendant would still be secure against those dangers which the rule against second jeopardy was intended to protect him from, *viz.*, oppressive action by the authorities and the possibility of a re-trial after an acquittal when he could not obtain a re-trial after a conviction. On the other hand, it would restore that state of equality to the two parties which the rule intended to establish, giving to both parties equal rights during the trial and equal rights to review, safeguarding the interests of both.

## CRIMINAL-LAW REFORM IN ENGLAND AND IN THE UNITED STATES<sup>1</sup>

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**A** CENTURY ago in England the administration of the criminal law was in a very unsatisfactory state. Crime was increasing and it was difficult to convict and punish the guilty. Witnesses perjured themselves, juries failed to convict in the face of clear evidence of guilt, and judges quashed indictments for slight mistakes of form. In 1827 an inquisition for murder was quashed because it was stated that the jurors presented "on their oath" instead of "on their oaths."<sup>2</sup>

The above situation, which was not confined to any one portion of the kingdom, was due to the very severe penalties attached to all offenses and to the great disadvantage at which the prisoner was placed by the law in that he was not allowed counsel, he could not testify in his own behalf, the witnesses in his favor were not sworn, and he was allowed no right to appeal. The public mind revolted at this barbarity and in many instances the human instinct of those who had the duty of administering the criminal law caused the discharge of those who were clearly guilty. The problem in England at this time was one of relaxation—to reduce penalties and modify procedure so as to render the prisoner's position less disadvantageous.<sup>3</sup>

Those who attempted the reform of the criminal law and procedure found four tremendous obstacles in their way. The first was the savage spirit engendered in Englishmen by the French Revolution. Sir Samuel Romilly in 1808 wrote in his diary:

If any person be desirous of having an adequate idea of the mischiev-

<sup>1</sup> Read at the Conference on the Reform of the Criminal Law and Procedure, May 13, 1911.

<sup>2</sup> Cited by Sir Harry Poland in *A Century of Law Reform*.

<sup>3</sup> A series of enactments extending through a century and ending with the Criminal Appeal Act of 1907 accomplished this result.

ous effects which have been produced in this country by the French Revolution and all its attendant horrors, he should attempt some legislative reform on humane and liberal principles. He will find, not only what a stupid dread of innovation, but what a savage spirit it has infused into the minds of many of his countrymen.<sup>1</sup>

The second obstacle was the complacent feeling of the legal profession that the criminal law was perfect, a state of mind due largely to Blackstone's Commentaries.<sup>2</sup> The third obstacle, in part a resultant of the other two, was the fear and dislike of innovation. The history of criminal-law reform in England shows this attitude always present when reforms were urged. If a proposal was new, therefore it was bad. In 1731 Lord Raymond opposed as an innovation a bill enacting that legal proceedings in criminal cases should be conducted in English instead of in Latin.<sup>3</sup> In 1792 Lord Kenyon opposed Fox's libel bill because it was contrary to the practise of a long series of years and tended to alter the established law of the realm.<sup>4</sup> In 1810 Sir Samuel Romilly's bill for the abolition of the death penalty in certain grades of larceny was defeated in the House of Lords on the ground that innovations in the criminal law were dangerous.<sup>5</sup> In the discussion of the Criminal Appeal Bill of 1906 Lord Halsbury questioned the propriety of the bill on the ground that it was an innovation.<sup>6</sup> In referring to the same bill Lord Alverstone said: "It is because this is an innovation in, and a fundamental departure from, our criminal procedure that I think it right to enter my protest against it."<sup>7</sup> Most of the opposition to reform came from those connected with the administration of the law. In speaking of the Criminal Appeal Bill of 1906 Lord Chancellor Loreburn said: "There is an ingrained predisposition on the part of members of the legal profession to resist reforms affecting the law."<sup>8</sup> The fourth obstacle in the way of reform in England was the refusal or at least the failure by

<sup>1</sup> *Life of Romilly*, II, 247.

<sup>2</sup> Campbell, *Chief Justices of England*, III, 353.

<sup>3</sup> *Ibid.*, III, 97.

<sup>5</sup> *Life of Romilly*, II, 326.

<sup>7</sup> 157 *Ibid.*, (4th Series) 1082.

<sup>4</sup> *Ibid.*, IV, 43.

<sup>6</sup> 154 *Hansard*, (4th Series) 1002.

<sup>8</sup> 157 *Ibid.*, (4th Series) 1092.

many to analyze the situation carefully and to determine in deliberate and logical manner what effect the proposed change would have. When Sergeant Glynn in 1770 moved in the House of Commons for an inquiry into the administration of the criminal law, Mr. Solicitor Thurlow proposed a severe censure upon the mover.<sup>1</sup> Sir Samuel Romilly's bills for the abolition of the death penalty in certain offenses were opposed on the ground that crime was increasing. Regarding this, Romilly says in his diary: "It appeared to me, and I stated, that these were rather arguments for than against the bill. What better reason for altering the law than that it is not efficacious; and that instead of its preventing crime, crimes are multiplied under its operation?"<sup>2</sup> The Criminal Appeal Bill of 1906 and that of 1907 were opposed on the ground that they would lessen the responsibility of judges and jurors, since their decisions would be no longer final. It was said in reply, that the reverse would be true and that the decisions of both would be made with more consideration and care because they would be subject to review.<sup>3</sup> Experience has shown this reply to have been correct.

The results of the administration of the criminal law in many parts of this country today are similar to those in England a century ago. Juries are slow to convict, and when they do there is considerable likelihood that there will be a reversal on writ of error. For example, the Missouri supreme court in a recent case, which has been much commented upon, quashed an indictment because the word "the" was omitted.<sup>4</sup> In addition to the difficulty of convicting there is often great delay in the trial of criminal cases. The unsatisfactory result with us is due largely to the fact that our procedure and practise give the prisoner an undue advantage. The privileges of having counsel, of challenging veniremen, of testifying or not as he sees fit, of having a review of the proceedings of the trial, have been so extended and abused that his position has been made almost impregnable. In order to secure the conviction of the guilty

<sup>1</sup> Campbell, *op. cit.*, VII, 30.

<sup>2</sup> *Life of Romilly*, II, 326.

<sup>3</sup> 175 *Hansard*, (4th Series) 222, and 179 *Ibid.*, (4th Series) 590.

<sup>4</sup> *State v. Campbell*, 210 Mo. 202.



without unnecessary delay in the trial, our problem is one of contraction—to restrict to their proper compass the privileges directly or indirectly accorded the accused.

Before we can enter on a program of reform propaganda, however,—before we are safe in proposing the adoption of measures changing our procedure and practise, even though such have proved successful elsewhere, we must analyze the situation before us and determine the influences which affect the administration of our criminal law; for it is as grave a mistake to hold that because a proposal is new it is therefore good, as it is to condemn a measure merely because of its newness.

The characteristic influences in this country which affect the administration of our criminal law may, I think, be traced to four general causes: (I) that this is a new country and a republic, whose citizens have strong and in some cases perverted ideas of democracy and freedom; (II) that we are a heterogeneous people composed of many races involving varied conflicting interests; (III) that our government is a federation, and that there are consequently separate and distinct legal jurisdictions; (IV) that our federal government and our individual states have rigid constitutions, interpreted by the courts.

I. Under the first head may be grouped the following resulting influences which exist in varying degrees in the different states: (1) Lack of respect for the law as such. The mere fact that there is a law forbidding certain acts has comparatively little effect in preventing the commission of those acts. The respect for law in this country is in direct proportion to the extent of its enforcement. As state's attorneys are often disinclined to prosecute except when forced to do so by public opinion, the result in many cases is neither enforcement nor respect. (2) The attitude of the newspapers, which usurp the function of the courts in trying those accused of crime. (3) Lynch law and the unwritten law. Lynch law is but a survival of the ideas of self-help and private revenge prevalent in new communities. The unwritten law is simply the attempt to introduce into the criminal law a practise more or less generally recognized as justifiable. It is customary or common law in the making. This unwritten law has to be reckoned with in re-



forming procedure, because it is no unusual practise for attorneys to enter a plea of insanity in order that they may introduce evidence to support the unwritten law. (4) Strong political influences, which often affect the selection of judges, and determine their conduct after election. (5) Public opinion, which is shifting and easily satisfied—reform generally stops with a new law on the statute book. (6) The fact that legislation is often apportioned to special groups or organizations of men in return for political support. (7) Strong tendency to sentimentality—witness the recent Nevada law giving a criminal condemned to death his choice as to the manner of dying.<sup>1</sup> (8) The *duello* attitude in our criminal trials, resulting from what has been so aptly named our “sporting theory of justice.”<sup>2</sup>

II. A large proportion of our population is foreign born or but one generation removed from foreign birth. Inborn race prejudices are strong, and tend to influence men in their judgments. Sometimes this race prejudice finds expression even in legislation. In addition to race feeling strong industrial bias and antagonism exist. The prosecution of Cornelius P. Shea and his associates for conspiracy in connection with the teamsters' strike in Chicago in 1905 was regarded by many members of labor unions as an attack upon the rights of organized labor. This feeling made conviction almost impossible.

III. The fact that the different states are separate and independent legal jurisdictions must be appreciated in considering criminal-law reform. Lay critics of criminal law and procedure are inclined to collect the defects to be found in the systems of procedure of all the states and ascribe these to a mythical system which they designate “American criminal procedure.” This is most misleading and tends to develop a spirit of hopelessness, because the situation seems so bad. No one system is nearly so bad as this composite picture. Different kinds of defects are to be found in the different states and even though two states have the same defect, this may be due to entirely differ-

<sup>1</sup> The law gives the condemned man the choice of death by hanging, shooting, or taking hydrocyanic acid.

<sup>2</sup> See Address of Roscoe Pound, *Amer. Bar Ass'n Rep.*, XXIX, 395, 404.

ent causes. Only by careful analysis of the particular system of procedure and the conditions which produce it is it possible to secure intelligent and successful reform in any jurisdiction.

IV. The last of the four general influences which affect criminal-law reform is that of the constitutions. Whether such result is desirable or not I do not propose to discuss here, but the fact is that the constitutions, as interpreted by the courts, exist as imposing obstacles to changes in the law, hence to criminal-law reform. It may be worth while to note a few instances that have arisen very recently. The supreme court of Washington held that it was unconstitutional to take away from the jury the issue of insanity in criminal cases.<sup>1</sup> The supreme court of Wisconsin decided that a law was unconstitutional which provided for the trial of the issue of insanity by a different jury from that which heard evidence as to the commission of the criminal act.<sup>2</sup> The supreme court of Michigan held unconstitutional, as violating the due-process-of-law provision, a statute providing that in homicide cases where the issues involve expert testimony the court shall appoint suitable disinterested persons to investigate the issues and testify at the trial, and the fact that such witnesses have been appointed shall be made known to the jury.<sup>3</sup> The committee on medical expert testimony of the American Medico-Psychological Association in its report before the last meeting of the association recommended: "That in all criminal cases absolutely equal rights should be accorded the medical witnesses for both the prosecution and the defense for the examination of the person alleged to be insane."<sup>4</sup> A law providing for the above would be unconstitutional on the ground that it compels the defendant to furnish evidence to incriminate himself. The committee on trial procedure of the Wisconsin branch of the American Institute of Criminal Law and Criminology at its meeting in Milwaukee last fall recommended that a statute be passed giving the state a writ of error in criminal

<sup>1</sup> *State v. Strasburg*, 110 Pac. R. 1020.

<sup>2</sup> *Oborn v. State*, 126 N. W. R. 737.

<sup>3</sup> *People v. Dickerson*, 129 N. W. R. 199.

<sup>4</sup> *American Journal of Insanity*, LXVII, 185.

cases where the trial court has decided a question of law adversely to the state, the supreme court to decide all questions of law thus presented, but their decision not to effect a reversal or subject the defendant to further prosecution. Though similar statutes have been passed and upheld in some states, yet the United States Supreme Court in February of this year held unconstitutional an act of Congress providing for the decision of a moot question by the court.<sup>1</sup>

One of the most unsatisfactory features of our criminal trials, conducive to great and often unnecessary delay, is the selection of the jury. In the Thaw trial, for instance, seven days were required to select the jury. In the trial of Shea and his associates for conspiracy seventy-eight days were required to complete the jury. In contrast to the experience of these cases, less than half an hour was expended in selecting the Crippen jury in England, and in the equally important trial of Alexander Dickman in the "Newcastle-train-murder case" the only time consumed was in swearing the first twelve jurors called.

As a defendant on trial for felony is entitled by the English law to twenty peremptory challenges and an unlimited number of challenges for cause, the explanation of the great difference between the English practise and that of some of our American states must lie outside the law of procedure. In the first place, the opposing counsel in an English trial discuss the jury panel before the trial and agree to the dismissal of anyone who appears incompetent to be a juror. In this way the necessity for challenge is often removed. This practise on the part of counsel is possible by reason of the character and personnel of the English bar. The barristers are removed from the personal pressure of the client, and are governed by the traditions of their profession and the restraints arising from membership in the Inns of Court. The fact of the divergent types of men who compose our bar, particularly in the large cities, coupled with the prevalent habit of dealing at arm's length and the *duello* attitude of opposing counsel, makes the plan of agreeing to the dismissal of veniremen impracticable here.

<sup>1</sup> *Muskrat v. U. S.*, 31 Sup. Ct. Rep. 250.

The most pronounced causes of delay in the selection of our juries is the *voir dire* examination. In the Shea case, as already stated, the examination of the veniremen, 4800 in all, required 78 days. Such preliminary examination is not required in England largely by reason of the homogeneous character of the people, particularly within each class. Juries in England are composed almost entirely of members of the lower middle class, most of whom are native born and under the full influence of English customs and traditions. The result is that for purposes of jury service one dozen lower-middle-class Englishmen is about the same as another dozen. In contradistinction to this, our population, as already shown, is heterogeneous, and this fact renders necessary some form of preliminary examination of prospective jurors. It remains to analyze the causes which contribute to the excessive length of such examinations.

The lack of respect for the law is largely responsible for the fact that the men who are the best fitted for jury service are the ones who make the greatest effort to avoid it. This desire to escape jury service was evident in all the trials, where there was much time consumed in selecting the jury. In the Shea case, for instance, the clerk of the court remarked: "They all want to get out. They step into the jury box scared to death for fear they will have to stay and try the case." In England jury service is regarded as a civic duty, and few attempt to escape it.

The second great cause of delay in the selection of our juries is the daily newspapers.<sup>1</sup> As soon as a crime has been committed the newspapers publish extensive accounts, giving facts in detail, rumors as well, and not always making a distinction between them. Not content with this, they often adopt an attitude for or against the prisoner. Opinions as to the guilt or innocence of the accused are thus created in the minds of the readers, which tend to make them unfit for jury service. The *Chicago Tribune*,<sup>2</sup> referring to the trial of Luetgert in 1897 for the murder of his wife, boastfully published the following:

Like others questioned Stone was asked what papers he had read, and

<sup>1</sup> See article by Frances Fenton in the *American Journal of Sociology*, November, 1910, and January, 1911.

<sup>2</sup> August 25, 1897.

like the others questioned Stone had read some of the accounts in the *Tribune* of the arrest and search of the police. Subsequently Stone was allowed to go for cause. With one exception all the veniremen had read the accounts in the *Tribune*.

Following the Crippen case in England the editors of two of the leading newspapers were fined for publishing improper accounts of the evidence.

The third cause of delay in the selection of the jury is the failure of the presiding judge to exercise the function and prerogative of his office to control and restrain the examination of the veniremen. The *Chicago Tribune*,<sup>1</sup> in commenting editorially on the delay in the selection of the jury in the Shea case, said: "For eleven weeks the judge has been a helpless and impatient spectator of the effort to fill a jury box with twelve men acceptable alike to prosecution and defense. He has been silent while lawyers wrangled. He has drawn his pay but has done no real work." There is no legitimate reason why the judge should be a helpless spectator of the effort to select a jury. Though the legislatures in some states have taken away from the judges the right to decide the law of the case, and have enacted that the jurors shall decide questions of law as well as of fact, the judge, even in such states, is the presiding officer. He can control the proceedings of the trial, and can regulate the examination of veniremen just as he can the examination of witnesses during the trial. Some judges, however, desire to escape the responsibility of interfering in the *voir dire* examination. Others are unwilling to offend counsel who may have been influential in securing the particular judge his position. Still others fear to run the risk of being reversed by the higher court. Whatever may be the reason, the fact remains that the judges fail to exercise their power to lessen delay in the selection of juries, and thus shorten our criminal trials.

The moral from all this is that careful study and analysis of conditions, legal, political and sociological, must precede proposals for change in our criminal law and procedure, if successful reforms are to be achieved.

<sup>1</sup> November 30, 1906.



## THE STATE AND THE CHILD<sup>1</sup>

JULIAN W. MACK

Judge of the United States Commerce Court

ONE hopeful method of preventing men from becoming criminals is the method of the juvenile court. We are trying to save the child, so as to prevent the growth of adult crime. I shall discuss briefly the meaning of the juvenile court,—the place in jurisprudence of this new legislation.

The conception of the ultimate right of the state to control the custody of the child is nothing new, although it is often thought that this right can be exercised in a court of chancery only if the child has property and as an incident to the control of such property. The courts of England and America have, however, in most emphatic language declared this view to be erroneous, and have clearly laid down the principle upon which juvenile-court legislation is primarily based, namely, that the state is the ultimate guardian of the child, and that when the parent, the first and natural guardian, is either unable or unwilling to do his duty toward the child, to raise it so that it shall become a decent citizen of the state, the state has the right to intervene, to protect itself against the rearing of a criminal, and to protect the child against the danger of its being led into the ways of criminality.

Now, this duty and right of the state in its relation to the child was first enforced in the case of the dependent child. If friends or the church failed to take charge of the orphan, the state took it in hand, in an endeavor to raise it properly. What the state did in dealing with its dependents is what it is endeavoring to do in most states through juvenile-court legislation, not only to the child who is merely dependent or neglected but to the one who is delinquent, who needs the state's care because its parents have allowed it to travel along the path

<sup>1</sup> Read at the Conference on the Reform of the Criminal Law and Procedure, May 13, 1911.



which will lead to criminality and have been unable or unwilling to prevent it from committing wrongs.

Here in Manhattan, however, as in England, you are dealing with the wayward child, not under the ultimate parental power of the state, but under its power to prohibit and punish crimes. The act of May 1909 says that a child is not to be accused of specific crimes, but of juvenile delinquency. Juvenile delinquency is, however, only another statutory name for the crimes and misdemeanors which if committed by adults are designated by various names. It is the crime of juvenile delinquency for which the child is, in greater New York, brought into your juvenile court. It comes there as a criminal charged with a crime, and under the criminal law, the main consideration is whether it has committed this crime of delinquency or not.

That is not the way that the western states, followed now by some of the western counties of New York, are dealing with the problem. The child is not charged with a crime. The forms of criminal-law procedure are not adopted, and the judgment is not one of guilty or not guilty of a crime. In solving the problem of the treatment and care of the child, the judge does not sentence it either to probation or to an institution for a definite time. He endeavors to find out whether the child, who is stated in a petition to be a delinquent in that it has done certain wrongs or has been incorrigible, is for its safety and proper development in need of the supervision of the state, and whether the state for its protection ought to undertake the supervision of the child. The court of chancery, representing the ultimate parental power of the state as *parens patriae*, undertakes the supervision if this is found necessary. The state intervenes for the good of the state and for the good of the child. The child is taken in hand by the state for an indeterminate period. This may in some cases extend until it reaches the age of majority. It may be for a very much shorter period. No attempt is made at the time the child comes before the court to determine how long the supervision shall last, because it is humanly impossible to know at that time how long that child is going to need the care of the state.

In the administration of the juvenile-court law,—and this

marks the real distinctive addition to our jurisprudence through this legislation—the child who has done something against the laws of the state is no longer treated as a criminal. The state no longer stigmatizes the child first and then attempts to save it, but takes it in hand as a wise parent deals with his child. Such a parent does not stigmatize his child by marking it with the brand of criminality that will remain throughout life; he attempts to shield it, not without correction, not without care, but with correcting care.

While under such legislation the child is not deemed a criminal, nevertheless the law recognizes the fact that some children under seventeen or eighteen are criminals in whatever sense you may define the word criminal; and the power is therefore given to the judge of the juvenile court to determine, as to any child, whether or not it shall be dealt with in the juvenile court or turned over to the criminal court. It sometimes but very rarely happens that a child at sixteen has become a habitual criminal, and it must be dealt with as such.

Juvenile-court legislation emphasizes the importance of the family and the home as the foundation of our civilization, and lays stress on the duty of the state to keep them intact. It is therefore the aim of the court in dealing with the child that has gone wrong, to give it a chance, if possible, to remain at home. Probation at home is the first remedy attempted. While the probation officer represents the power of the state, he represents, more than that, the genuine interest of the state in the child, and in the family of which that child forms a part.

Every endeavor is made through the probation officer to keep the child in the home, to restore harmonious relations between the child, the family and society. To accomplish this, the child must not be placed on probation for two or three months and then left alone. That is no probation at all.

In order to afford probation that shall be something real in the life of the child, there must be properly trained and selected probation officers. In the beginning of this legislation in the west, the laws made no provision for probation officers. That was left to private initiative, and in Chicago for example private philanthropy supplied twenty or more probation officers, one

for each district in the city. In time, however, the state made provision for public probation officers, selected through civil-service examinations—the only method at all feasible as long as political machines attempt to control even such officers. Beside thirty policemen assigned to this work, the Chicago juvenile court has thirty to thirty-five probation officers, a chief and assistant chief, all chosen under civil-service examinations.

I read in this morning's paper that you are to have in New York a dozen probation officers. You need at least five or ten times a dozen to do the work properly; because if probation is to be the alternative to the taking of the child away from its home, it must be something real in the life of the child; it cannot be perfunctory; and to make it real, the probation officer must not be overburdened. No man or woman can really know a child and its family, can be a real friend to that child, can take the place of the supervision in the reformatory, if he has two hundred or more children to take care of, as will certainly be the case in New York with only a dozen probation officers.

Something in addition to the public probation officer is needed, even if you have five dozen of them. The public official representing the power of the state, the trained expert doing expert work, is essential; but the interest, the sympathy and the active work of public-spirited citizens is also essential if the state as an organized body, and the people of the state as members of that organized body, want to save themselves and their children from a new generation of criminals. The big-brother and the big-sister movement must be supported and augmented.

If for every child that comes into the juvenile court you find, in addition and subordinated to the expert body of probation officers, one man or one woman who knows what life means, who has made a success of life in the real sense of the word, and not in the money sense, who feels the spirit of that phrase that passes our lips so lightly, but is realized so little in the lives of most of us, the spirit of human brotherhood,—if you will get one such man or woman for each child that comes into court, to be to him a real big brother or sister, the problem of juvenile delinquency will be well on the way to solution.

There are many good women in our cities who think it a great

thing to bring the children into the juvenile court so that they may come into contact with the all-wise man, the judge of the juvenile court. That is a mistake. It is infinitely better to keep the child out of any court. It is infinitely better to prevent the child from going wrong than to attempt to save it in the juvenile court after it has gone wrong.

The real work of the world is, however, not the mere preventive work, but the constructively preventive work. It will not do simply to eradicate the evils that surround the children in all large cities. They must be supplanted by the positive good. It will not do to wipe out the dance halls connected with the saloons that lead so many of our girls to their ruin. Wiping out is only a half measure, and a totally ineffective one, because the demand of the child for recreation, for pleasure and for happiness is the most fundamental cry of childhood. The young people are entitled to have it answered; they have a right to the opportunity for satisfying it in decent surroundings, and it is not socialism to say that the state is in duty bound to supply this need.

It will not do merely to enact compulsory-education laws, to send the children to school, and to endeavor to make them learn. They are entitled to be taught in the right way, and to be taught right things; they are entitled to be guarded while they are being taught; and they are entitled to have the state, which says they must go to school, see to it that they are in fit mental and physical condition to go to school.

It may sound sensational to say that adenoids lead to the penitentiary, but they do. Take a youngster from a neglected home, or from an uninformed home, and suffering from adenoid growths. The schoolroom of course is overcrowded. We have not yet reached the ideal of limited numbers in public schoolrooms; the teacher has more than she can attend to, and cannot give individual care to the child. The boy, nervous because of his defective breathing power, cannot do the ordinary tasks that are set for the children; naturally he gets out of harmony with his surroundings and begins to "bum" from school. There is not much fun in bumming alone, so he draws two or three others away with him. Mere bumming is not sufficient; it is

more fun to break open a sealed car and to take things than to pick up things on the track, which might naturally be considered derelict property. The boy comes into contact with the police, and if, as has been possible only during the last ten or twelve years, he gets into the juvenile court, there is a chance that his physical defect may be observed and corrected. But if there be no juvenile court, and the boy gets into the police court, is found guilty of larceny and sentenced to a short term in jail, during which he mingles with adult criminals, the state is starting him on a path that too often leads to the commission of more desperate acts and ultimately lands him in the penitentiary, —and all through a failure to demand a correction of physical ailments in his youth.

If the state is going to enforce compulsory education, it must know whether the child is fit to go to school. It must have a physician in school to examine it, and a nurse or other official in school to follow it up and see that its parents do their duty.

I do not say that the state can or should take the place of the parents; it should force them to do their duty; if they are unable, then the state must aid; if they are unwilling, then the state should compel them, under penalty of removing the child and of punishing the parents for contributing toward its dependency or delinquency.

Throughout the civilized world, juvenile courts modeled on American precedents are being established, and the duty of the state towards its children is being more and more understood and performed. During the discussion of the Children's Bill in the House of Commons two years ago, one member well expressed the best thought of the age in these words:

We want to say to the child if the world or the world's law has not been its friend in the past, it shall be now. We say that it is the duty of this Parliament, and this Parliament is determined to lift, if possible, and rescue it, to shut the prison door and to open the door of hope.



## PROBATION IN THE JUVENILE COURT

HOMER FOLKS AND ARTHUR W. TOWNE

President and Secretary, respectively, of the New York State Probation Commission

IT is conceivable that a few hundred years ago a boy twelve years of age, arrested four times within eleven months for stealing, might after his fourth conviction have been hanged. As late as 1884 in New York state, and in some states more recently, such a boy might have been sentenced to jail, where he would be thrown among the corrupting influences of adult criminals of the lowest type. If such a fate did not await him, he would probably have been committed to a house of refuge or reform school, which in some instances would have been equally bad. In 1902, however, when a boy with this record of arrests was brought before the juvenile court of one of the larger cities of New York state, the judge, instead of concluding that the boy was hopelessly bad and must be shut up for the protection of society, concluded that it was his duty not only to determine whether the boy was guilty of the specific offenses charged, but also to ascertain the history of the lad and what circumstances had led him to commit these offenses. Accordingly, the judge directed a probation officer to investigate the home conditions, antecedents and character of the boy.

The probation officer's investigation showed, among other things, that the boy was obliged to do a great deal of work outside of school hours, and had practically no chance for recreation. His mother compelled him to go out early in the morning to peddle papers, and did not let him have any breakfast until he had sold his papers. Actuated by the natural instinct of hunger, the boy had stolen milk and other food for his breakfast on the four occasions when he had been arrested. The inquiries disclosed facts which the formal testimony given in court had failed to reveal, and which indicated that the boy was not bad, but was the victim of unfortunate circumstances. In spite



of the four arrests, the judge therefore decided to see what could be accomplished by placing the lad under the oversight of a competent, interested probation officer. The latter, who was a woman volunteer worker, established friendly relations with the boy and his family, and induced the mother to look after her son more carefully. The officer helped the boy in many ways, and when it became necessary for him to leave school, secured work for him. As tokens of his appreciation of her friendship and helpfulness, the boy on several occasions presented her with specimens of the work that he had done in the shop where he was employed. After a while he went to work in a grocery store, where he has remained ever since, having now become its proprietor. He has taken good care of his mother, and is an orderly, sober, industrious citizen.

The contrast between the treatment of this boy and the benighted methods that might have been used in such a case in years gone by, is illustrative of the great advance made in the last decade or two in the treatment by society of its delinquent and neglected children. No longer do our courts brand children as depraved criminals, or measure out vengeance for their misdeeds. The juvenile court of today endeavors in each case to discover whether the cause of delinquency is in the child or in his environment. It asks, Who sinned, this child or his parents or society? The dominant note in juvenile-court work is no longer punishment, but reclamation. The old idea of punitive justice has been softened and subjected to the light of reason. The modern way of dealing with delinquent children is at once natural, humane, educative and helpful.

The probation system, although still in the stage of development, is generally recognized and conceded to be the most satisfactory and hopeful means of dealing with most cases of juvenile delinquency. If children have become depraved by prolonged neglect and evil influences, and if the home conditions are grossly injurious, it may be necessary to resort to commitment to an institution; but commitment, as a rule, is undesirable and unnecessary. That other time-honored mode of dealing with offenders—the fine system—is rapidly losing favor. The practise of fining children continues in New York City, but

in many courts it has been practically abandoned. When a child is fined, the fine is usually paid by his parents. This means that the child gets a spanking. The trouble with the fine system is that it is purely punitive, and is not socially reconstructive. Another method adopted by the courts, especially in trivial cases, is to let the child go with an admonition. Here again, the effect is only temporary, and does not operate to mold new habits. What is needed is some system of treatment that will restrain children from continuing in evil ways, and which at the same time will be adaptable to their individual needs and capable of overcoming baneful influences and of building up proper habits. This need is supplied by the probation system, which provides a combination of oversight, admonition, advice, protection and friendly, practical assistance.

When a child is placed on probation he is required to observe certain conditions, as that he shall attend school regularly; shall keep away from harmful places and unfit companions; shall obey his parents and be in the house by a reasonable hour in the evening; and, in a word, shall at all times and in all places conduct himself in a reasonable manner. The child is usually required to report about once a week to the probation officer, who, in turn, visits the child's home and, if necessary, advises and admonishes the parents. The probation officer seeks to win the confidence of the child, and secures the co-operation and assistance of church workers, settlement and boys'-club workers, and other agencies and persons who may be able to contribute to the improvement of the child's home conditions or of his habits and interests. The probationary period usually lasts from six months to a year or more, although it is subject to revocation at any time if supervision is found to be unnecessary. The probation officer reports concerning the child's progress to the court at least monthly, and should his conduct continue to be bad, the probation officer may have him returned to court for more severe treatment.

It is sometimes thought that the probation system is an outgrowth of the juvenile court, but this is not strictly the fact. The development of the juvenile court has been closely associated and more or less parallel with that of the probation system.

In Massachusetts and other places where the trial of children's cases has for many years been separate and apart from that of adult offenders, and especially since the enactment of the Illinois Juvenile Court Law of 1899, which provides for the hearing of children's cases according to civil instead of criminal procedure, and which has been copied with more or less modification in a number of other states, the methods of inquiry and supervision known as probation have come into general use in juvenile courts as being indispensable in dealing with delinquent and neglected children. Similar methods were probably used, however, where children's cases were heard together with the cases of adults, and where the practise existed of suspending sentence. It should be remembered that probation is used not only with children, but with adult offenders, and that probation in many places has developed out of the old practise of suspending sentence.

The first state to enact a probation law was Massachusetts. The first statute, enacted in 1878, applied only to the county of Suffolk (Boston), but two years later an amendment extended the system throughout the state. The system was applied to both juvenile and adult offenders. No other state had a probation law until 1899, when such statutes were passed in Illinois, Minnesota and Rhode Island. The following year New Jersey and Vermont were added to the states using the system. In 1900, therefore, there were only 6 states in the United States that employed probation. Since then the system has spread rapidly, and at the end of 1910 legislation authorizing its use was found in 39 states and the District of Columbia. In 38 states and the District of Columbia the system is applied to children. <sup>248</sup> Only about 20 states permit the release of adult offenders on probation.

The following table shows the number of children placed on probation during the last three years in New York state (exclusive of the children's court of Manhattan, where there have been no paid probation officers until this year), and also the charges which have been sustained against the children:

*Children Placed on Probation, and their Offenses*

Charges	Boys			Girls			Total Children		
	1908	1909	1910	1908	1909	1910	1908	1909	1910
Assault .....	....	38	62	....	1	5	....	39	67
Burglary or robbery .....	230	185	233	....	8	1	230	193	234
Disorderly or ungovernable child...	490	232	266	81	47	51	571	279	317
Improper guardianship .....	29	31	34	13	41	32	42	72	66
Larceny or kindred offenses .....	733	706	757	34	33	29	767	739	786
Malicious mischief, breach of peace or disorderly conduct.....	....	223	218	....	6	5	....	229	223
Truancy (including prosecutions for truancy under charge of vagrancy)	306	340	373	24	37	51	330	377	424
Other charges and unstated lesser offenses .....	238	135	141	10	2	8	248	137	149
Total placed on probation.....	2026	1890	2084	162	175	182	2188	2065	2266

Including the children continued on probation from 1909 into 1910, the number of children under probationary oversight in New York state during part or all of 1910 was 3,233. Of this number, 1,064 remained on probation on December 31, 1910.

During the past three years, over 6,006 children have passed from probationary oversight in New York state, and in 5,672 cases the probation officers, in their reports to the state probation commission, have estimated the results of the treatment. The following table shows that about three-quarters of those passing from probation during these three years have been declared by the probation officers to be improved by the probationary oversight.

*Estimated Results of Probation in the Cases of 5,245 Boys and 427 Girls  
(Percentages)*

Results	Boys			Girls		
	1908	1909	1910	1908	1909	1910
Discharged from probation with improvement .....	81	79	76	85	75	77
Discharged from probation without improvement .....	2	3	4	0.7	3	3
Re-arrested and committed.....	15	16	16	13	20	16
Absconded or lost from oversight....	0.7	0.9	1	0	0	2

It should be recognized that the standards by which probation officers in different courts judge the results of probationary treatment differ, and that the effectiveness of the probationary treatment varies much in different jurisdictions. For these and other reasons the statistics cited above cannot be accepted as strictly accurate, but it is significant that the percentages correspond so closely from year to year.

The successful operation of the probation system is more difficult than might at first appear. The application of the system to unsuitable cases, the use of improper methods of oversight, and the appointment of unsuitable persons to act as probation officers, have led in some jurisdictions to very unsatisfactory results. Although the system is still in its infancy, experience seems to have established certain principles and methods, which for some time must be followed.

The most important factor in the probation system is the personality of the probation officer. A probation officer, to deal with children effectively, should like children, and should be of high character, good judgment, tact and sympathy. Probation officers are appointed, as a rule, by justices and magistrates, and may be either salaried or volunteer, and either men or women. Many of the earlier probation officers were police officers and representatives of charitable, humane and religious organizations. This was because the courts naturally turned to such persons for such service, since they were easily available. In some localities men and women without any experience in reformatory and social work, and often without any aptitude for it, have been enlisted as volunteer probation officers. The present trend is to dispense with the service of police officers, and to employ civilians, fitted by temperament and training, who can devote their entire time to probation work. The assistance of representatives of charitable, humane and religious organizations, and of volunteers, is being retained in some places under the supervision and direction of paid officers.

Experience has shown that the police, by reason of their training and work if for no other reason, tend to place the main emphasis in their probation work upon discipline and repression, instead of upon friendly helpfulness and practical



assistance. It is almost impossible for a blue-coated, brass-buttoned police officer, no matter how friendly he may wish to be, to win the friendship of a child on probation and of the child's family to such a degree that inquiries by the policeman in the neighborhood and visits by him to the child's home will not be resented. (A law was passed in New York City last year that legislated out of the probation service all members of the police force who had been serving as probation officers in that city. Similar laws have been enacted also in other states.) While probation work carried on by the police is likely to degenerate into a form of espionage and repression, probation work carried on through unsupervised volunteers tends to become synonymous with leniency and sentimentalism. Where volunteers are used, children on probation have sometimes been pampered, and the system has justly fallen into discredit. This is unfortunate, for while probation is essentially merciful and protective, it should be something substantial, effective and reformatory. One of the purposes of probation is to protect society by watching over those on probation, preventing the repetition of their misdeeds, and permanently improving their habits and ideas of right and wrong. Volunteer service, if unsupervised, is of questionable value; but when the volunteers carry on their duties under the direction and oversight of salaried officers and are required to conform to certain standards of efficiency, their work may become highly beneficial. *not organized*

In most large cities the juvenile courts have well-organized corps of probation officers. The largest force is in the Chicago juvenile court, where there are thirty paid civilian probation officers. The juvenile court in St. Louis has eleven paid officers. It is customary in the larger courts to have a chief probation officer, and in many jurisdictions the work is carried on according to a district system. The statistics of juvenile courts show that as a rule each paid probation officer has under his supervision fifty or more children at a time. This means that if the average length of probation is one year, each probation officer would annually receive on probation about fifty new children. This is probably as many cases as the average probation officer can properly look after and help; for in addition to exercising



supervision over those on probation, most probation officers are obliged to be in court more or less, and to investigate the cases of many children brought before the court who are not placed on probation. It is important that the number of probation officers be adequate, in order that they may not be overloaded with cases and prevented from devoting the requisite attention to each case.

The probation system has been used largely in cities, but in proportion to the population there is as much need of the system in small communities as in the larger centers. The report of the New York state probation commission for 1909 had the following to say concerning the importance of probation in towns and villages:

The social conditions and the non-enforcement of law in many village centers, and the general neglect and absence of preventive agencies in more sparsely settled places, result in habits and conditions which seriously call for the use of probationary measures. Much of the shiftlessness, lawlessness, truancy, vice and crime in rural places, goes uncorrected. Before anything effective is done to check the wayward tendencies in children and the rowdyism in young men, the evils often become so grave as to be beyond remedy. Some of the worst criminals and the most degenerate families in the state have grown up in small communities. In the absence of probation, practically the only course available is commitment to jail.

The question of probation in rural communities of late has been receiving the careful consideration of juvenile-court and probation workers throughout the United States. It is impracticable, as a rule, to employ a probation officer to work in a single town or village, since there is usually not enough work in such a place to occupy the time of a probation officer. This difficulty is being met in two ways: first, by the use of volunteers; and second, by the use of so-called county probation officers. Under the latter system a probation officer or officers appointed by the county judge or by the judge of the juvenile court of the county, serve in all parts of the county, traveling from place to place according to the distribution of the cases. If the area of the county is large, the territory may be divided

between two or more such salaried officers. The chief advantages of this method of covering the rural districts are that the workers are more expert than they would otherwise be, and that the system throughout the county is centralized and coördinated. Whenever necessary, these salaried officers can enlist the assistance of carefully chosen volunteers to deal with special cases in their respective localities. The future development of probation in rural communities will probably be along the lines of the county plan, with a combination of paid county officers and local volunteer assistants.

It was to be expected that as soon as the position of probation officer was made a publicly salaried position, attempts would be made to fill the positions through the influence of partisan politics, and often with broken-down politicians or the personal friends of politicians. The appointments in some places have been of this sort. One of the principal problems, therefore, which at present confronts juvenile-court judges and friends of the probation system is to arrive at some satisfactory means of guaranteeing that only those shall be appointed as probation officers who are fitted for such work by training, interest and ability. In some places what seem to be promising beginnings have been made in making appointments from eligible lists, established by competitive civil-service examinations. Such examinations have been conducted in part orally and with the assistance of experts, and the experience and personality of the candidates have been made subjects for examination.

Next in importance to an adequate number of faithful, competent probation officers is the use of proper methods. One of the chief duties of probation officers is to inquire into the antecedents, character and surroundings of children in order to lay information before the court which will enable it to dispose of the cases most wisely. These preliminary investigations are indispensable as a means of ascertaining which children are fit subjects for probation. It is highly important that these investigations be made and be made carefully. After a child is placed on probation the supervision should be real, and the aid should be friendly and practical. Some probation officers imagine that they can reform the character of children by simply

requiring them to report once a week to the probation office. In some courts the unwise practise obtains of having such reports made by children in large groups. These probation officers forget that children are bundles of habits which have been built up and shaped by countless influences in the home and outside environment. A probation officer, to bring about actual changes in the ideals and conduct of a child, must see the child not only in the probation office, but in the child's home and elsewhere. He must unravel the influences that have had undesirable effects on the child, and must strive to overcome these influences. He must win the child's confidence; improve his companionships and recreations; induce his parents to do their part promptly; secure the coöperation of every possible agency and social force that may be helpful and reformatory; and bring the force of his personality to bear upon the child so as to stimulate the latter's ambition and desire to do right. Furthermore, the probationary treatment must last long enough to produce some degree of permanency in its effects. A period of only a few weeks is in most cases absurd. The delinquency of a child is usually the result of processes that have been operating for months and years. It is usually impossible to accomplish the desired improvement in less than a year.

When girls are placed on probation, they should, of course, be placed under the care of women officers. One of the sad features of our judicial and institutional systems is that they result usually in the neglect of girls and young women who are in danger of becoming wayward or who have already become delinquent. The police are reluctant to arrest a girl because the disgrace of being arrested does her almost irreparable harm. The parents of a girl who gets beyond control rebel against having her taken before the court for the same reason, and also because they dislike to have her committed to an institution or to be obliged to pay her fine, and because they know that a simple admonition by the judge will have little, if any, effect. The result is that very few girls and young women are brought before the courts until their evil habits have become so confirmed as to be almost incurable. Here is a place where the probation system, if applied sufficiently early, can be of

great value. In communities where there are competent women probation officers, and where the benefit of their work is generally recognized, it is found that parents, the police, social workers, teachers and other persons solicit the interest and private assistance of these women probation officers in behalf of certain girls who are "going wrong." The very parents who would object to having their daughters arrested, consent to take them to the woman probation officer and, if desirable, to have the latter bring the girls before the judge in his private office in order that they may be officially placed under the oversight and influence of the probation officer. The parents consent to this because there is no record of an arrest, no public trial in court, and no newspaper notoriety. In many cases where the delinquency of the girl is not pronounced, the probation officer befriends, watches after and aids the girl without having her brought before the judge even in his private office. Probation work among girls is more difficult than among boys, but it is meeting with gratifying results, and it is highly important that probationary methods be used more frequently and earlier in this class of cases.

Another way in which probation can be beneficial is through compelling parents to do more nearly their full duty to their children. It is a trite remark that the delinquencies of children are usually due to parental neglect. Many states have enacted laws providing for the punishment of parents who neglect their children or otherwise contribute to their delinquency, and these laws usually provide that the parents may be placed on probation. Many a mother and father have been made more attentive to the welfare of their children by being charged with adult contributory delinquency and being placed on probation. When such parents have not been placed on probation, but their children are on probation, the probation officer often induces the parents to look after their children more carefully.

One of the achievements of the probation system has been to increase the practise of requiring those whose offenses have caused losses or injury, to make restitution or reparation for such losses or injuries. If a boy breaks a window, is there anything more instructive and wholesome in its effect upon him

and more just to the owner of the window, than for the court to require the boy to pay the expense of having the glass reset? Under the probation system children who commit thefts, damages to property and other offenses, are required while on probation to pay from their earnings or savings for the damages or losses occasioned by their deeds. Similar practises are being used in the probation system in the case of adult offenders.

Probation has come to stay. The system is still in the making, however, and requires thoughtful study and intelligent development. It needs also the moral interest and financial support of the public. The system cannot accomplish what it is intended to accomplish without an adequate number of probation officers, and appropriations of sufficient size to secure the services of properly qualified officers. The expenses of operating the system, aside from the salaries of the officers, are small, and the salaries paid to probation officers are investments which net large dividends through curing juvenile delinquency, preventing adult criminality, and reducing the cost of crime—especially of maintaining penal and reformatory institutions. Local probation associations are highly valuable, as a means toward securing adequate appropriations and competent officers, and toward developing and maintaining proper methods, and securing the necessary coöperation of various agencies. Another means of promoting the extension and development of probation is through the establishment of state probation commissions. Three states—New York, Massachusetts and Vermont—have such bodies, and bills for the establishment of similar departments have been introduced this year into the legislatures of Illinois and Pennsylvania. Such bodies can be of large usefulness in doing propaganda work, in inspecting the work of probation officers, in establishing proper standards of work, and in coördinating the operations of the system throughout the state. Too great emphasis cannot be placed on the importance of having such local probation associations and state probation commissions to promote the further development and improvement of the probation system. (There has never been more interest in probation than at present, and we have every reason to believe that the next decade will witness a marked growth of the system.)



## TREATMENT OF MINOR CASES OF JUVENILE DELINQUENCY

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**I**N dealing with the juvenile delinquent, unlike the adult criminal, none of the vexed questions as to the objects of punishment need be considered. This is so, because during the past generation a new sentiment has developed with respect to the proper manner of dealing with children. We have come to see that the salvation of mankind lies in the child. The child of to-day is the citizen of to-morrow. This idea has penetrated even into the criminal law and has transformed its method of dealing with the young offender. To-day we have the amazing spectacle of the lawyer and the layman, the scientist and the sentimentalist at one in their opinion as to the object of punishment when applied to the child. In his case, punishment is sought only as a reformatory measure. It is universally recognized that reformation should be the sole object in inflicting punishment on the juvenile delinquent. We still hear, apropos of the adult criminal and his sentence, "It serves him right;" but such an attitude toward the child is no longer tolerated. The expression then becomes, "It is good for him; it will make him a better boy."

Granting that in the child's case reformation is the object of punishment, the next question that presents itself is, What is juvenile delinquency? To reach any real understanding of juvenile delinquency, it is essential that we clarify our ideas as to what constitutes a good child. In other words, what type of young citizen are we seeking to rear? What qualities, what characteristics are we trying to develop? Do we desire such qualities as shrewdness and cleverness, or are these characteristics that tend to promote dishonesty? Granting that they are, can we do without the shrewd, clever man? In the abstract the question is almost unanswerable. Concretely, in the individual



case it is not so difficult to handle. We know too little about the laws that govern heredity to be able to formulate any rules as to breeding. But certain facts we have learned, as that the law of the survival of the fittest is likely to mean the survival of the one who is physically most fit, and that physical strength is not the sole quality with which one must be endowed in order that he may be best fitted to carry forward our civilization. Therefore in spite of our confusion, when we attempt to deal abstractly with the qualities we desire to breed and develop, when it comes to the concrete case of the child in our own family, we are unvexed by doubt. We know when the child's behavior is satisfactory. We want our children to be honest, clean, sincere, humane. In other words, it is the normal child, who has been taught self-control and so respects the rights of others, that constitutes the good child.

If then, the normal self-controlled child is our standard, it is evident that all conduct showing deviations from the normal, all exhibitions of lack of self-control, furnish the cases that come before the courts and that bear the stigma of juvenile delinquency. If this analysis is correct, it is plain that there are two distinct classes of cases, one curable and the other incurable, or curable only after long and expert treatment. It is possible to teach the normal child self-control, but as yet there is no remedy that can make the abnormal child normal nor teach him, save in a small degree, the lesson of self-restraint. We have no specific treatment for making the insane sane; and the abnormal, deficient or sub-normal person is merely an example of one who suffers from a milder form of a similar disease. As yet the courts have not recognized this fact. The acts of a criminal are judged to be either those of an insane or of a normal person. If held to be the former, he is treated as a sick person; if the latter, he is held responsible for his acts and punished accordingly. But to-day we see the first faint beginnings of a recognition of a third class, a class that lies between the insane and the sane. Psychopathic research has developed certain simple tests which show pretty accurately whether the child is above or below the normal standard. The abnormal class needs to be looked upon like the insane, as irre-

sponsible and in need of physical and mental care. When the law recognizes this third class of cases, it may completely revise its conception of what constitutes a serious and what a minor offense.

Instead of viewing a case of delinquency from the point of view of the person injured in order that the personal and the property rights of the individual be preserved, the court will be more interested to promote the general welfare of the community and will be concerned not so much with the *act* as with the *doer*. It is of comparatively little consequence to society whether a given individual suffers from the delinquency of another and thereby loses twenty-five dollars, but it is of fundamental importance that if the delinquent be a degenerate or morally defective he be not allowed at large to become a source of infection in the community.

When we come to recognize that children are either normal or abnormal, responsible or irresponsible, we shall define the serious case as the offense committed by the irresponsible child, because this child, being a permanent sore in society, spreads disease among his comrades: while the minor offense will be the one wrongful act of the responsible child, who can be taught better and who in the future with proper training is likely to become a useful and valuable citizen.

For instance, take the case of a normal, healthy, active child, who under unusual provocation suddenly strikes out and perhaps seriously hurts a comrade. It was an act of a moment, a burst of temper, a lack of self-control; but the spirit and warmth back of this intense display of feeling may be the very qualities that will make this child a strong and capable man when he has learned to govern his emotions. Yet to-day he will have a grave charge of assault preferred against him and in the eyes of the law be held for a serious offense, when really, as far as the effect on this given child and the community is concerned, the matter is not serious. On the other hand, take the case of the boy who is a little sneak, who throws stones from real, inherent viciousness, who is shrewd enough not to injure anyone seriously, but who has an innate, malicious desire to cause suffering. This lad, however vicious, will be charged only with the minor

offense of causing a disturbance, because his act resulted in no damage, yet from our point of view his case is infinitely more serious than the preceding, for here we are dealing with an instance of degeneracy, or of a vicious disposition due to a bad heredity or an evil environment which is likely to make it well-nigh impossible to transform the young culprit into a citizen of social value.

Or again, take the case of the little burglar, who is a normal child, but bubbling over with the spirit of adventure and with no outlet for this spirit. He breaks into a house, but does so merely for the joy of breaking in, and for the joy afterward of being chased. He takes no "booty," or such as he takes he scatters broadcast in his flight. Take the case of the small boy who steals that his love of amusement may be gratified in moving-picture shows, or takes food because he is hungry. Compare these cases with that of the young culprit who steals from babyhood up, who does not know what it is to respect the rights of others, who was born with an inherent taint or acquired such a taint through bad environment. Though the act may be the same in all these cases, it is only in the latter instance that the hurt to society and to the child is really serious, because in this case the influence of the wrongdoer on himself and mankind is permanent and corrupting. If we accept this classification, we shall consider the difficult and serious cases to be those committed by people who are irresponsible and curable only by expert care if at all. Under this head will come all the wrongful acts of degenerates, defectives, imbeciles, sub-normals and repeated offenders. The defects of these offenders may be either the product of inheritance or the result of bad environment and bad treatment. Frequently the latter case is as hopeless as the former because such bad habits may have been acquired and the child may have become so diseased that he is practically as incurable as if he had been born deficient.

On the other hand we will class as minor offenses the acts committed by the normal, healthy child, no matter what these acts may be. The point at which the two classes of cases seem to converge, is where the normal child, because of bad influences, tends to become degenerate.

Having divided the cases of juvenile delinquency into the two classes of serious and minor offenses, based on the distinction of the irresponsible and the responsible, the next question that arises is how to make this separation effective in practise. It is obvious that this can be accomplished only through an exhaustive investigation of every case of delinquency. And, as has been stated before, the attention of the investigator must be directed to the delinquent rather than to the specific act with which he is charged. It is only when each case can be given ample time and attention, when the delinquent is treated as a child and a ward of the state and is not run through the court as a criminal, that the real causes leading to the offenses can be ascertained. In dealing with juvenile delinquency we need to know all the conditions surrounding the child's life—home conditions, school conditions, physical and mental conditions and neighborhood environment. In a small city like Denver it is possible to ascertain the life history of each one of its inhabitants, but the essential facts are very hard to get at when the juvenile court of a big city, located in a given spot, attempts to deal with the thousands of children who come to it from every part of the city. Even if the ever-increasing number of cases could be adequately handled in one place it has been found, as shown by the experience of Chicago and other large cities, that it is almost impossible to secure the attendance of parents, witnesses and complainants at a juvenile court located at a great distance from their homes, because of the time and expense involved in so doing. The problem is that of reducing the difficulties presented by the large city to the simpler problems of the small town; and to accomplish this the following plan has been suggested.

In New York City, for instance, it is proposed that the boroughs of Manhattan and the Bronx be divided into a dozen districts, each of approximately the size of the city of Denver. In the center of each of these districts it is proposed that a room or rooms be secured to serve as headquarters for a bureau of investigation. Any child who gets into trouble is to be taken to his district juvenile center and the case there examined into. If the offense is trivial the child is to be cared for by the dis-

strict center; if serious he will be sent to the detention home, and in due course to the central juvenile court. In this way all minor or trivial cases will be weeded out from the more serious ones, at a preliminary hearing, thus decreasing the number of children appearing in the central juvenile court by at least one-half the present number, and making it possible for every child to receive the requisite individual attention. It has been suggested that settlement houses or rooms in the public schools after school hours be utilized as such district centers. This would diminish the expense, though the cost of the rental of a couple of rooms in any ordinary dwelling would not be great. Each district center should have two or three probation officers, and one of these officers should at all times be at the district center to receive the children who may be brought there. This officer should make or have made an investigation of each case. Pending the investigation, if the case seemed to be of a serious nature the child should not be returned to his own home, but should be sent to the detention home and thence in due course to the central juvenile court. If, however, it seemed at all possible to return the child to his home, this should be done, directing him to return at a given time to the district center, after his case had been investigated and reported on. There should be a fixed hour every day or every other day when the district-center cases should be heard. Under the law now in force it would be necessary that some one possessing judicial authority should preside over these preliminary hearings in the districts. The judge of the central juvenile court might have power vested in him to appoint suitable persons to act as assistant judges in the district centers. Probably capable young lawyers could be obtained for this service at a moderate rate of compensation, in view of the fact that they need give only a small proportion of their time to the work. Eventually, after the plan had been fully tried and found to be a success, and after probation officers of the requisite ability had been developed, a chief probation officer might be appointed for each district and the judicial duties in question devolved upon him. When that time came, the law could be modified so as to invest the chief probation officer with sufficient judicial power to enable him to render the services of an assistant judge.



As this paper deals primarily with minor offenses of juvenile delinquents, only a word need be said as to the needs of the central juvenile court, which should deal only with the serious offenses. Such a court should be situated in a convenient and central location. It should be presided over by a children's judge who should be the final and ultimate authority in all cases. He ought to have the appointment of all the officers of the court, including the assistant judges and probation officers. Only by unity and coöperation can work of this nature be successfully carried on.

In connection with the children's court and adjoining it there should be a detention home, where children should be cared for pending trial. This home should be not merely a place of detention, but an educational institution as well, with a thoroughly-equipped medical and psychopathic clinic. In such a detention home it should be possible to make a special study of all children brought in, and the results of such study should be embodied in a report for the use of the judge in reaching his decisions.

There should be an adequate staff of probation officers in the central court in addition to the probation officers assigned to the several district centers. These officers should not only exercise the usual supervision over all children placed on probation but should make investigations in all cases. Thorough and accurate records should be kept in the district centers as well as in the central court. Each day a copy of the day's records of each district should be transmitted to the central juvenile court, so that the court may have a complete history of every juvenile delinquent in the city. Then when a child appears in the central court, his previous record in any of the districts, if he has one, will be known at once. It is submitted that it is only by some such scheme as the above that it will be possible in a large city to separate the abnormal from the normal child, the serious from the minor offense, giving each case the special investigation and treatment which it demands.

In considering the treatment to be accorded to the two classes of cases respectively, it must be borne in mind that besides the primary needs of food and shelter there remain other



human demands scarcely less imperative, and that among the most important of these are the need for the right kind of work, the need for the right kind of recreation and the need for the right kind of affection. These needs are even more vital in the case of the child than in that of the adult, and not less vital for the abnormal child than for the normal. Unless the responsible and self-controlled child has work, recreation and affection, he is likely to become abnormal, and an irresponsible or deficient child will have his abnormalities increased by a failure to have these needs satisfied, while adequate work, recreation and affection will often do much toward removing both acquired and inherited deficiencies. It is because of the failure to supply the last of these needs, namely, of the right kind of affection, that so many institutions do not make a greater success than they do with the children under their care. Miss Jane Addams has recently brought very vividly to our attention the need that all young life has for recreation and has reminded us that if the child is not supplied with the proper kind, he will seek and adopt such as he can find. As to the strengthening, ennobling and steadying influence of work upon character, there is no need of argument.

But though the abnormal child as well as the normal one has certain fundamental needs, just as the weed like the flower needs plenty of water, fresh air and sunshine to keep it sound and healthy, we must not blind ourselves to the fact that our aim in the two classes of cases is quite distinct. To continue our simile of weeds and flowers, we may deem it wise to let the weed live, yet we do not wish it to increase and multiply, but seek rather to suppress it. As long as the weed is to live it must be treated in such a way as to bring out whatever qualities of utility and beauty it may possess, but our chief endeavor is not to let it spread its influence further than may be. In the case of the flower, on the other hand, our attitude is wholly different. We plant seed with the hope that we may reap a hundred-fold. We wish not only to keep the flower healthy and normal, but desire that it shall increase and spread broadcast its influence of sweetness and beauty. We should have similar aims in our treatment of the abnormal and the normal

child. The abnormal child must come under the jurisdiction of the central juvenile court and while having his primary human needs satisfied, must at the same time receive there scientific and expert treatment. In many, perhaps in most cases, this will mean removal from his home, not only because his home cannot give him the special care needed, but also that he may be segregated and thus prevented from spreading the moral contagion of his defective or degenerate personality.

On the other hand, the trivial offenses of the normal child, such as playing ball in the streets, should never be brought even to the central juvenile court. These difficulties should be settled by means of the district center, the child adjusted to the family and the family to the child, and both adjusted to the society of which they form a part.

The task of caring for the minor cases of juvenile delinquency, while not requiring such expert knowledge as the graver class of cases, yields infinitely greater harvests. To straighten out the tangled web in the normal child's life is to do far more than to render aid in one individual case. It is to send forth an influence that is likely to spread far and wide in every direction. If a sufficient number of flowers can be raised in one spot they will choke and drive out the weeds. If we can rear and train a sufficient number of normal children there will be less and less abnormal children to deal with.

In the beginning of this paper it was said that in the case of the child the sole object of punishment was reformation. This brings us, in the last analysis, face to face with the question whether reformation is secured through punishment.

What is it that most frequently transforms a young delinquent from a terror to his neighborhood into a useful and capable boy? Is it not the directing of his misused capabilities into their proper channel? Is not all wrong-doing merely the misuse of things? Let me illustrate by reference to an actual case. There was a small boy who had appeared in the Chicago juvenile court many times on various charges of theft. He had been sent to a reform school and had had other punishments meted out to him. Finally the psychopathic clinic got hold of him and made a thorough investigation. They were able to show

that what was needed was not more punishment but an adequate outlet for the boy's unusual energy and ability. At least the facts disclosed showed the boy to be consumed with a passion for experimenting with electricity, and showed that his thefts had always been of electrical apparatus or money to buy electrical appliances. His most serious crimes consisted of burglariously entering electrical power houses in order that he might show his "gang" "how the wheels went round." Up to the time of the examination no one had understood the boy. He was a Pole who spoke only broken English; his father and mother were Poles and were sending him to a Polish school where he was being taught history and religion and never a word about his beloved electricity. This boy has now been placed in a technical school. He is radiantly happy in his work and there is no longer any danger of his stealing or misbehaving in any way.

This is not the time to go into a deeper analysis of the part that punishment may be made to play in the reformation of character, but it is certainly evident that its efficacy has been greatly exaggerated in the past and that much can be accomplished without any punishment whatever.

To sum up, then, it is essential that in all cases of juvenile delinquency, both in serious and minor offenses, there be a thorough investigation of the causes leading to the act, that the serious cases be weeded out from the more trivial, and that each then receive its appropriate treatment. It seems evident also that in large cities such a classification and weeding-out can be accomplished only by some such means as that of districting the city. If such a plan were adopted it would then be comparatively easy to come into close contact with every delinquent child in the city and to make the proper investigation. It is also believed that under such a system the general public would have greater information concerning their particular neighborhood and that each district would take pride in decreasing its juvenile delinquency, opening recreation centers, and endeavoring in every way to make of itself a better neighborhood than any other for boys and girls to live in. It is also believed that if there were such an opportunity for coming into contact with every child,

the children might be awakened to the feeling that the district center was a place where their wrongs could be righted, as well as a place where they were to be held responsible for their mistakes. In other words, it is hoped that such centers might become the clearing houses of the several districts for all minor difficulties arising among children.

This particular method of dealing with juvenile delinquency has not been tried, but the tendencies of the present day are all toward decentralization. Everywhere we are beginning to recognize the fact that while in the development of industries the best results are obtained through concentration and unification, such a method does not prove successful when applied to human beings. We have an example of this in our large correctional institutions, which are beginning to recognize that they have had comparatively little success because of their attempt to put an infinite variety of human beings through one and the same routine, without regard to individual needs. Casting about for some way of improving this situation, the reformatories have hit upon what is known as the "cottage plan." This is merely an attempt to divide up an institution into a large number of families so that the individual shall have special attention instead of trying to keep children in one big body and dealing with them collectively. The plan here proposed for all large cities is simply an outgrowth of this idea and is an endeavor to reduce the city to a number of small towns so that the needs of the individual in a given district, where each district as well as each individual varies greatly, may be properly looked after. The necessary unity and uniformity of policy and procedure will be secured through the supervision of the central children's court.

PROCEEDINGS OF THE CONFERENCE ON THE  
REFORM OF THE CRIMINAL LAW AND  
PROCEDURE HELD IN NEW YORK  
MAY 12 AND 13, 1911

The spring meeting of the Academy of Political Science held in New York on May 12 and 13, 1911, was made the occasion of a conference on the Reform of the Criminal Law and Procedure. In calling this conference the Academy coöperated with the American Institute of Criminal Law and Criminology, the Committee on the Reform of the Law of the Association of the Bar of the City of New York, the New York County Lawyers' Association, the Committee on Criminal Courts of the Charity Organization Society in the City of New York, and the Prison Association of New York. Three sessions were held at Earl Hall, Columbia University. The program was as follows:

FIRST SESSION, FRIDAY, MAY 12

Powers and Importance of the Magistrates' Court, by Alfred R. Page  
The Difficulties of Extradition, by John Bassett Moore  
Discussion

SECOND SESSION, SATURDAY, MAY 12

What is Crime? by William M. Ivins  
The Relation of the Criminal to Society, by Franklin H. Giddings  
The State and the Child, by Julian W. Mack.  
The Effects of the Twice-in-Jeopardy Principle in Criminal Trials,  
by Charles C. Nott, jr.  
The Contrast between the Problem of Criminal-Law Reform in Eng-  
land and in America, by Edwin R. Keedy  
Discussion

THIRD SESSION, SATURDAY, MAY 13

Expert Evidence in Criminal Trials, by Carlos F. MacDonald  
The Consequences of Unenforceable Legislation, by Howard S. Gans  
The Ethics of Punishment, by Felix Adler  
Responsibility for Crime by Corporations, by Arthur W. Machen, jr.  
Discussion

Professor George W. Kirchwey presided at the first session, and Professor Samuel McCune Lindsay at the second and third sessions.

FORMATION OF THE NEW YORK SOCIETY OF CRIMINAL LAW  
AND CRIMINOLOGY

At the opening session of the conference, Professor George W. Kirchwey, Chairman, announced a meeting to be held on the evening of May 12 at the Bar Association, for the formation of a New York state branch of the American Institute of Criminal Law and Criminology. At this meeting it was decided to refer the matter back to the full conference for action.

At the third session of the conference, Professor Kirchwey accordingly introduced the following resolutions, which were unanimously adopted:

*Resolved*, That this conference do now constitute itself the New York Society of Criminal Law and Criminology, to constitute the New York state branch of the American Institute of Criminal Law and Criminology.

*Resolved*, That the executive committee of this conference be and is hereby chosen to be the first board of directors of the society for the following purposes, *viz*:

*First*, to effect the incorporation of the society under the laws of the state of New York, and

*Second*, to carry on the society and administer its affairs until such board shall be succeeded by the board of directors instituted by its articles of incorporation.

*Resolved*, That any member of this conference may become a charter member of the society on payment of the membership fee.

The New York Society of Criminal Law and Criminology was thus duly constituted, and one of the important ends of the conference was achieved.

The Executive Committee consisted of the following persons: George W. Kirchwey, Chairman; George Gordon Battle, Edward T. Devine, Howard S. Gans, William M. Ivins, O. F. Lewis, Samuel McCune Lindsay, Carlos F. MacDonald, Julius M. Mayer, Henry Raymond Mussey, Eugene A. Philbin,



Eugene Smith, Henry W. Taft, Charles S. Whitman, Bronson Winthrop.

For resolutions offered by Dr. MacDonald and referred to this committee, see pp. 658-659.

#### CONFERENCE DINNER

The Conference Dinner was held at the Hotel Astor on Saturday evening, May 13, Mr. William M. Ivins presiding. William Howard Taft, President of the United States, was the guest of honor. Addresses were delivered by President Taft, Professor George W. Kirchwey, of Columbia University, Mr. Francis J. Heney, of San Francisco, and Mr. Nathan William MacChesney, of Chicago. Hon. Henry L. Stimson, the newly appointed secretary of war, was also called on for a brief extemporaneous address.

The papers read at the sessions are printed elsewhere in this volume (see pp. 531, 559, 563, 590, 600, 625, 635, 641, 660, 667 and 676). The discussions and the addresses at the dinner are found in the following pages, excepting the address of President Taft, which is printed at page 620.

#### DISCUSSIONS AT THE CONFERENCE

HON. JOSEPH E. CORRIGAN, City Magistrate, New York City:

It would perhaps be well to point out certain fairly obvious things in reference to the police department. Everyone realizes that the policeman is the official defender of society against the underworld, against the crook; and everyone must realize that in the constant warfare going on between them it is therefore necessary to the interest of society to make their soldiers, or their defenders, as efficient as possible and to have the best possible administration of the police force.

There are some who hold that the entire function of the police force is to maintain outward order and decency, and that it makes little difference, apparently, what goes on behind locked doors, so long as the condition of the streets is not disturbed. That, perhaps, might well be the function of the uniformed force; but the function of the detective bureau should be to prevent all kinds of crime being committed behind locked doors.

You can never have a proper administration until the police department knows that the man who is in nominal control is the real dominating authority of that department. Here in New York we have a police commissioner who is appointed by the mayor for an uncertain term: that is to say, his term depends entirely upon the will of the appointing officer, and he may be removed at any time, for any reason, or for no reason. The result, of course, is that the police department soon realizes that the police commissioner is not the real head of the police force. There is always an appeal from the commissioner to the mayor, or to the powers that may be supposed to influence the mayor; and consequently the commissioner does not have the respect of the force. We have all become familiar with the rumors that from time to time appear in the papers, that so-and-so is going. General Greene was going; General Bingham was going; Commissioner McAdoo was going; and finally Commissioner Baker was going. That necessarily makes for demoralization in any force.

Another reason why the police commissioner should be protected in his tenure of office is that it is necessary for proper discipline that the commissioner should know the personnel of the force, and know it thoroughly. It is also necessary that he should have considerable experience, and that experience cannot be acquired outside the police department, or rather, outside of some task connected with the administration of criminal law.

The police force, composed of about ten thousand men, has under its control the whole of Manhattan, the Bronx and the other boroughs of the greater city. Hence the commissioner must be in touch with the needs of all the different districts, and he must know the personality and character of the men upon whom he has to rely for the carrying out of his plans. Before you can have proper discipline in your police force, the force must feel that the man who is in authority, is in there to stay, that he knows the game, as we may say, that he knows the needs of the department, and that he is in the office with power to enforce his orders and carry out his plans.

We cannot have that condition until we have a commissioner who is appointed for a definite and lengthy term of years—I should personally suggest at least ten years—and who is removable, not at the will of the appointing power, but on charges, before the appellate division, in the same way in which a magistrate may be removed now. If the commissioner were appointed for that length of time, and were removable only upon charges after a public hearing, there would be a much greater chance of finding a man willing to devote a good portion of his

life to a study of the needs of the department, and willing to make a career for himself through the proper administration of the department. It would also be necessary to pay him an adequate salary, because you want to get a very high-grade man for that position, and if you want a high-grade man you always have to pay for him. That is one of the mistakes we frequently make in public life; we expect to get first-class men for third-class pay; rarely we get them; generally we do not. A commissioner who has that power and that authority will be able to systematize the work of the department in its different branches, the central office, the detective bureau, and the uniformed force that patrols the streets.

Another great defect in our present system is that a man goes in as commissioner for a short period of time, with absolutely no previous experience to fit him for the work, and with very little chance of learning anything, because he does not know upon whom he may safely rely. A new commissioner goes to headquarters and there is at once a conspiracy on the part of the members of the force to pull the wool over his eyes and to make things as easy for themselves as possible.

Nothing is more demoralizing in a police force than to punish a man unjustly. If the commissioner has the idea which some commissioners have had, that every policeman must necessarily be punished, and that the object of trial is not to find out whether he is guilty or innocent, but to punish him anyhow, you are bound to have a thoroughly demoralized and therefore helpless force. In support of that contention I need only point to some cases in which men who have been "broken" by the commissioner after trial, or alleged trial, have been reinstated by the appellate division, with opinions that were really scathing, stating that the testimony was flimsy and trifling, testimony such as no man in his proper senses would believe. It has a worse effect on the spirit and enthusiasm of a body of men to convict one man and punish him, when he and his comrades know that he was doing his duty, than it has to let three or four guilty men go without punishment. In the first case you start a feeling in the force that the commissioner cannot be trusted: in the other event you simply lead the force to believe that he may be fooled sometimes, but they are not sure of it, and they know that it is not safe to depend on it.

The most difficult phase of the police question is always the relation between the police and the criminal; I refer to the question of graft. Of course as long as we have laws and as long as people can make money by breaking laws, they will be willing to pay a portion of what they make for the privilege of breaking them with impunity. It is

also obvious that graft is collected not from honest people, but only from crooks. As long as we have crooks who evade laws we are bound to have a certain amount of graft. This can be minimized by being careful to catch and punish the graft giver; it can be abolished altogether by doing away with laws, but in no other way. Until we change human nature, or abolish all laws, we are bound to have some graft.

While graft is a serious evil, it is not the greatest evil. From my point of view, it is less harmful to the community that half a dozen liquor-dealers should pay a small monthly tribute, than that half a dozen murderers should escape. One is an incidental evil that we cannot hope to do away with, but can minimize by wise administration; the other is a serious menace to society. We fail to realize how great is the danger to society from crimes of violence. Their frequency and the comparative impunity with which they are committed presents a situation much more dangerous to the public, in my judgment, than the question of whether or not an isolated policeman will now and then get a free glass of beer or a five-dollar bill from a saloon-keeper. However, that is a question about which everyone may have his own point of view; and I understand that a very eminent authority contends that graft is of all evils the very greatest. While a man with this opinion dominates the force we will never have a proper administration of the department.

HON. PETER T. BARLOW, City Magistrate, New York City:

Prior to the enactment of the new inferior-courts act, all the magistrates in New York City rotated, going from court to court all through the city for their terms of service. Since the enactment of the Page law, five magistrates have become, to a certain extent, specialists. Two of these magistrates preside daily in the domestic-relations court. There the troubles and tribulations of married life are taken care of and discussed by these two gentleman, who have become experts and who are doing extraordinarily clever, capable and conscientious work. Three magistrates have been assigned to the women's night court. These three follow each other regularly for terms of ten nights each. The court begins at eight o'clock in the evening, and under the law cannot close until three in the morning. The work there is arduous and painful to the last degree. I am one of the three magistrates, and I have sat, beginning September 1, 1910, ten nights a month ever since.

The arraignments in that court, as you all know, are simply the arraignments of women of the street and all other females arrested be-

tween the hours of four in the afternoon and three in the morning. I have just finished one term in that court, ending yesterday morning at half past three.

In the ten nights there were 236 female prisoners arraigned. Of those 236 there were roughly 160 women of the street, or 66%. About sixty of these were sent to the workhouse, and nearly all of those who were thus committed were women who had prior records or who declined absolutely a chance of being put on probation under our peculiarly sympathetic and effective probation officer. The rest were either discharged or sent to institutions. Very few of them were fined.

I state these facts because I want to dwell for a moment on the question of fining. It is a horrid thing to do, but there is nothing else under our present organization. What we should have, and what we should have at once, is something between liberty and the workhouse for cases where probation cannot be employed. We ought not to take the money of these women. We know where it comes from. There should be a reformatory in New York City itself, a house of sequestration, where the women would not be treated absolutely as prisoners, although restrained of their liberty, but where they could be sequestered for a reasonable length of time; and after punishment of that kind, once or twice, then if there was no hope for reform, they could be sent either to other institutions like the House of the Good Shepherd or the Magdalen Home, or to the workhouse. At present we cannot send women of the street to the workhouse simply for loitering, and it is in cases of loitering, and loitering only, that fines are imposed.

The object in assigning three men to the night court was to secure, if possible, unanimity of treatment and of sentence for the various cases tried there, and this object has been successfully attained. The three magistrates now sitting in the court have recently held a conference to bring about a further unanimity and to see what can be done in relation to fining. There seems to be nothing that we can do, and much as we regret the necessity of taking from these offenders money fines, there does not seem to be at present any other way of dealing with the offense. When we have got so far along that we can have a house of sequestration, it will simplify things very much.

The great advantage of having three men specializing in this court, as in the court of domestic relations, is that the offender has much less chance of getting by the magistrate unrecognized on arraignment if a second or third offender. The magistrate recognizes the persons who are brought up again and again on the same charge, even when under different names, and in many cases he knows their history; and they



are afterwards taken into the identification bureau, and their identity established beyond doubt.

In conclusion, I wish to say that clause 79 of the Page law, which provides for the physical examination of female offenders of a certain class, and which was declared unconstitutional by Judge Bischoff, has just been upheld by the appellate division. To my mind that clause is the most sane, the most useful and the most salutary clause in the entire inferior-courts act.

HON. FRANCIS J. SWAYZE, Justice of the supreme court of New Jersey, Newark, N. J.

Mr. Ivins' paper showed the impossibility of adopting a definition of crime that in a few words should suffice to include all that ought to be included, and exclude all that ought to be excluded, and nothing more. That is a difficulty not confined to the criminal law, or to a definition of crime; for as I understand it we lawyers are as yet unable to frame a satisfactory definition of tort, and I am not sure that we are able to frame a satisfactory definition in a few words of the legal conception of a contract. I know that after one hundred years the courts and the lawyers in this country do not yet know the extent of the police power of the state. They do not yet know what is or what is not an interference with interstate commerce by the state, and we are still engaged in the effort to define what is meant by the words "liberty" and "property" in the constitution.

I think that is no great misfortune. I think it is far better that we should go step by step, and not go so fast that we regret our action. It is the first step that costs. The desirable thing in matters as fundamental as this is to go slow. Perhaps it is because I have practised law for nearly thirty years in a very conservative state that I still believe in adhering to the old constitutional sanctions. It may be that at the present time the defendant in a criminal case has advantages that he did not have when the rule against being put twice in jeopardy was inserted in the constitution; but as he is still encountering the whole power and resources of organized society to-day, I think it would be very unfortunate if by any amendment it were made possible for the state to attempt time and again to secure a conviction after there had once been an acquittal.

We do not always realize how some of the evils from which we suffer may be corrected by simple acts of legislation. In New Jersey we have recently had some discussion as to the right of courts to declare



an act unconstitutional, and the question is not whether the individual judge thinks the act unconstitutional, not whether he would vote against it on that ground if he were the legislator, but the question for him to put to himself is whether the governor or the legislator had the right to think otherwise. This is a very different point of view. We have corrected some of the evils by statute in New Jersey. We have provided that any defect upon the face of an indictment must be complained of, and an objection made before the jury is sworn, so that such an incident as that which happened in Missouri would be impossible with us. But if the time for raising an objection has not passed, any motion to quash the indictment under our procedure is addressed to the discretion of the court. We have gone further than that, for by statute we have authorized the court to amend an indictment, in case of a variance between the charge and the proof in more or less immaterial matters,—always, however, carefully preserving the essential rights of the defendant. The furthest we have gone in that respect is to say that where an indictment for murder charged the defendant with having killed John So-and-So, and the proof was that the man's name was Joseph, the Court might amend the indictment. That was going a long way, and it would be permissible only in a case where there was no doubt as to the identity of the person who was murdered.

There are other defects that cannot be righted or reached by legislation, but can be reached by judges. Take such a question as the admissibility of the confession of the defendant, where the first problem that presents itself is whether it was voluntary or whether it was induced by hope or fear. The decision of that may involve a difficult and delicate question of fact for the trial judge; but if so, it is his plain duty to admit the confession because in that way there is no mistrial, and his error, if he has made an error, can readily be corrected afterwards. Every trial judge who is worthy of his position would in case of doubt admit the confession, and if afterwards he found he was in error, would see that the rights of the defendant were safeguarded.

So difficult questions of law may arise. I myself in the trial of a homicide case had a difficult question to decide. It was perfectly easy to decide it in favor of the prisoner, but the state would have had no redress, and it was the duty of the court to decide it in favor of the state, so that if error were made, it might be reviewed. Now that comes down to the fundamental thing in all matters of this kind. A bad system will work well if administered by careful and thoughtful men, but a good system will work badly if administered by careless or thoughtless men.

DR. HENRY RUTGERS MARSHALL:

In the few moments at my command I wish to ask you to consider one point which seems to me of great importance in relation to the matters here under discussion, and which is too commonly overlooked or forgotten.

I do not need to remind you that our modes of criminal procedure are based largely upon the assumption that an individual is to be held responsible for his acts in some cases, but not in other cases. Thus, for example, our experts are asked to distinguish between sanity and insanity, because it is assumed that the insane are not responsible.

But what if there is no such thing as irresponsible action? Suppose we become convinced that every individual must be held to be responsible for every one of his acts without any exception? Evidently if such a position is maintained some readjustment of our conceptions is entailed. And just this thesis I think must be maintained; for, as a psychologist, I do not see how any other is tenable.

The current notion of the possibility of irresponsible action has come down to us from the early conception of the self as a fixed entity which is somewhat loosely attached to the body; which leaves the body during sleep and in cases of coma, such as that produced by concussion of the brain; and which at times may be displaced in control of the body by alien spirits, as was supposed to happen during delirium.

With such a conception firmly grounded, and with the practical necessity of determining the limits of punishment, it naturally became habitual to claim that deeds which were evil in effect, but which were not thought deserving of punishment, were due, not to the initiation of the man's real self, but to the initiation of an alien spirit, in such cases the individual man being held to be not responsible.

This conception of the nature of the self and of its relation to the body we have however nowadays abandoned altogether; and when we consider the nature of responsibility from the psychologist's standpoint, we discover that an individual is held responsible for a past act because we are convinced that his present existing self bears in it, so to speak, the marks of that past act, *i. e.*, that his present self would not be what it is but for the characteristics that made that past act possible.

But evidently this is true not only in some cases but in all cases. As there is no case in which a man's present self is not developed from his past selves, there can be no case in which a man's present self does not bear in it the traces of his past acts, and therefore no case where a man's present self is not what it is because of characteristics which

under given conditions made his past acts what they were. It is little less than absurd to say that a man who has done a certain deed is not now a different man than he would have been had he not done that deed; and that a just judgment of his present character can be made without recognition of the fact that he did act as he did in the past. Yet just such positions are implied if we contend that any man is irresponsible for any of his acts, and if they were evil is to be judged guiltless.

It is evident that this doctrine of thoroughgoing responsibility has profound ethical significance, but this we cannot here consider: we must limit ourselves to its application to the subject now under discussion. And in this connection it would appear that if this conception of the meaning of responsibility is warranted, while the old problems with which we are here concerned do not disappear, they must certainly be viewed in a new light. For whether we shall punish a given individual for a given act will not then be determined by our decision as to the individual's responsibility or irresponsibility, for we must hold him in all cases to be and to have been responsible; but it will turn entirely upon the practical value of restraint or punishment to the individual himself and to the community of which he is a member.

I am profoundly convinced that we shall make no thoroughly satisfactory advance in the development of corrective theory until we accept fully this principle of thoroughgoing responsibility; nor until we openly acknowledge that our procedure must be based upon a rationalized ethical method looking altogether to the protection of the state, and to the development of the individual for himself and as a member of the community.

One important incidental advantage connected with this mode of approach appears in the fact that it would relieve us at once from the present-day conflict of experts in connection with the perfectly impossible attempt to draw a sharp line between sanity and insanity; for this distinction will then appear to be utterly irrelevant, it being agreed that whether an individual was or was not what may be called insane in the moment of his act, nevertheless he was responsible at the moment of that act; and is now to be held responsible for it.

Maintaining such a view, the question presented to the experts would relate not to the determination of the bounds of insanity, but to the probable nature of the man's acts in the future. The questions before the criminologist on the other hand would relate to the proper treatment of an individual who had once shown the characteristics displayed by the criminal.

I may make this general position clearer by some simple examples. Let us assume that a small child kills his sister in a fit of anger. Instead of saying, "The child is irresponsible on account of his youth," we should then say, "Although the child is responsible for his act, the plasticity of youth is in his favor, and there is every probability that by proper instruction in a proper environment he may become a perfectly worthy citizen. It is not therefore worth while to punish him, but it is worth while to put him under proper supervision in a corrective institution."

Or, to take another case; a young woman wronged by her lover kills her babe. The average jury will acquit her on the ground that she did the deed in a moment of temporary insanity during which she was not responsible. We would hold that she was entirely responsible; but that a rational procedure must take into consideration the fact that the temptations to such an act were enormously strong and quite unique, and that they cannot by any possibility recur. In such a procedure, therefore, we should rationally determine not to treat the woman as we would an ordinary murderer, but to place her in an environment which will insure the perfecting of her character.

Or again—the members of a jury considering a case like that of Thaw, appreciating the nature of his provocation, do not wish to punish him as a murderer. They can only keep him from the electric chair by declaring him irresponsible because temporarily insane; and having declared him insane they insist that he is still insane and must be incarcerated. But we should hold that he was responsible for that act; and that if we think him to be still the same type of man that he was, we must act for the protection of the community and treat him exactly as we would treat any other murderer—unless it appears that better results would accrue to him as an individual member of the community, or to the state, as the result of his incarceration under the charge of skilled alienists.

Our alienists in short would no longer be asked by the courts to mark the sharp line between sanity and insanity which never is in fact a sharp line: rather would they be asked to advise the state whether a criminal is one who probably could be reformed, or who would better be treated as a dangerous member of the community. Our jurors in like manner would be called upon to decide not, whether the criminal was or was not responsible, but whether his treatment in one way or another would be better for him as an individual and for the community.

The adoption of this thesis of thoroughgoing responsibility would not

materially change our general mode of procedure in relation to criminals ; but it would in my view result in the placing of this procedure on a more rational and ethical basis.

WILLIAM H. BALDWIN, Washington, D. C. :

The difficulty of which I desire to speak relates to interstate rendition, which, because it is easier, I shall take the liberty of calling " extradition," as so many people do. It depends upon the existence of the widely spread but entirely erroneous impression that extradition is possible only for treason and felony, and that for a misdemeanor, or under a misdemeanor charge, it is impossible to bring an offender back. This impression depends, perhaps, in part upon the language of the constitution, where treason, felony, or other crime is spoken of, from which it is supposed that the " other crime " must be of the grade of felony ; partly, perhaps, on the fact that for many minor offenses it is not thought worth while to undergo the trouble and expense of bringing an offender back : and, also, in part, in later years, on the fact that at the Interstate Extradition Conference which met in New York in 1887, it was the consensus of opinion among the governors that extradition for petty crimes should not be encouraged.

There is one offense in which I have been particularly interested, and in which it is important that the offender should be brought back. I refer to the desertion of family. There seems to be something about the complicated conditions of our modern life which renders an increasing number of men indisposed to discharge the obligations that they are under to support wife and children : and because of this indisposition and of the burden that on account of it is laid upon the community, all the states have enacted laws making such conduct a criminal offense.

Until about a dozen years ago, in every state except four which had laws on the subject, the offense was a misdemeanor, under which it was possible to punish the men with sufficient severity : but because of this misleading impression to which I have alluded, no attempt was made in most instances to bring the man back after he had crossed the state line.

Illinois brought back a good many deserters, as did some other states, but the impression remained such an obstacle that it was proposed to raise the gravity of the offense above misdemeanor, in order that extradition might be possible. That was the principal reason why the government of this, and a number of other states, took this step. New York enacted such a law in 1905, as well as North Dakota. Two



years later Indiana enacted not only a stringent felony law, but also another law making non-support of children a felony, punishable by imprisonment in the penitentiary for seven years—a law apparently sufficiently severe to follow the offender to the ends of the earth. This has been followed by other states, until there are now nine others, besides the four original ones, which make desertion a felony. But the impression prevails in those states that have not done this that it is impossible to bring a man back, and other states are talking about passing similar laws. I have been informed in a letter which I received this morning from St. Louis that Missouri has just passed a law making non-support of children a felony, and that extradition is now possible. The fact is that it has been possible for many years.

These felony laws are undesirable, not only because the procedure is more expensive and involves more delay and more difficulty, but also because the punishment is so severe that juries are indisposed to convict.

The best way in which these cases can be handled is in courts like your court of domestic relations, recently established in New York, where an attempt is made in the first place to settle the matter without judicial procedure, and, when formal trial becomes necessary, to impose such punishment, and under such conditions, as will secure the support of the family. It is important to bring deserters back, not only that they may be punished, so far as they deserve it, but also that they may be reformed, and so made to support their families and relieve the state of that burden.

It is interesting to note the situation in Pennsylvania, where desertion is only a misdemeanor. Within the last five years sixty-seven men have been brought back for this offense under the misdemeanor charge. This has been done mostly in the eastern end of the state. A few days ago I received from Pittsburgh a letter, which illustrates the mistaken impression to which I have alluded, saying that the overseers of the poor there were feeding ninety-five families in which the husband and father had absconded, and because the offense was only a misdemeanor they were unable to reach him.

I want to call attention to the desirability of not making the punishment for this offense so great that it cannot be handled as it is now being so well handled in the court of domestic relations in New York and Buffalo, and also to the desirability of making it possible for these courts to reach deserters wherever they go.

For more than six years back I have been looking diligently for any case in which a governor has refused to grant a requisition for a family



deserter because the offense was a misdemeanor instead of a felony. I have failed to find such a case. It is an unfortunate thing that this impression has gone abroad that a misdemeanor is not an extraditable offense, and it should be removed, in order that family deserters may be brought back. This would be better for the community, because it would be relieved of the burden of supporting the deserted family.

If desertion or non-support of family, which is now dealt with by the magistrates in the domestic-relations court as disorderly conduct, could be made a misdemeanor, and if the magistrates could be empowered to dispose of such misdemeanors, as they now dispose of certain misdemeanors consisting of violations of the health laws and of the speed laws and cruelty to animals, it would permit the domestic-relations court to handle all cases of non-support or desertion, instead of having to resort to the court of general sessions as is now done whenever the man has gone out of the state. Such an arrangement would relieve the overcrowded court of general sessions and the magistrates would be quite competent to deal with all the cases, while the district attorney's office would have the same discretion as to applying for requisitions that it now has. The state could suffer no harm, and the treatment of these cases would be much more expeditious.

The governors should therefore be urged to continue granting requisitions for family desertion, even where it is only a misdemeanor, particularly as it is so desirable to bring the deserter back to the support of his family and the fulfilment of his duty.

PROF. WILLIAM E. MIKELL, Professor of Law, University of Pennsylvania.

The first speaker dwelt on what seems to me an important point in the reform of criminal law, the necessity of arriving in the first place at a definition. We shall never get a scientific system of criminal law, until we do get a definition of what crime is. I am afraid that the first speaker to-day (Mr. Ivins) would not allow the third speaker (Mr. Nott) to frame a definition if it proceeded along the lines of his paper. Mr. Nott spoke of the case tried recently in New York of a striker who had killed a tourist going through the city. From the way in which the district attorney spoke of it I took it that he regarded it as a serious crime. According to Mr. Ivins, as it was the first killing that this striker had done, and as it had not been shown that he was regularly accustomed to killing tourists who went by, the crime should not be regarded as so serious as Mr. Nott seemed to think. Neither five minutes nor twenty minutes is sufficient time to construct a theory or

even a possible outline of a theory upon which a definition of crime could be framed. Such a definition, however, is the very first thing that we need.

The second thing, which has not been touched upon to-day, is the reform to some extent of the criminal law itself. We have had the procedure discussed to-day, and the need of a definition of crime. But both of these would practically be useless unless we can by a study of the principles of our criminal law arrive at, or create, I will say, some real scientific system of criminal law. That is one thing that the Anglo-American's mind has not yet set itself to. I suppose that as a race we are not primarily a scientific people. In the absence of a scientific spirit we like to think of ourselves as practical. But even as a practical people we have certainly failed in the realm of criminal law. Anybody can see to-day, whether he practises in the criminal court or does not practise at all, that the criminal law in this country is not satisfactorily administered. If we consider the criminal law as a science, which we who profess to teach it at any rate like to do, certainly it is not satisfactory. No science could be more unsatisfactory. We have rules in one department of the criminal law which vary from or are in direct opposition to the rules in another department. We first administer the one and then administer the other. When we come to apply both at the same time we compromise, shutting our eyes to the fact that we have ignored one or both rules that we professed to be following. If we consider law not as a science, but as a business, we are no better off. What modern business could exist with the meager results obtained for the expense and time that our administration of the criminal law shows?

It seems to me that one of the great things to be done for the criminal law is to make a basic scientific study of the whole subject of substantive criminal law, a study informed not only with a knowledge of the past, but with the new light that the continental jurists and criminologists of the last ten years have shed on the subject.

#### ADDRESSES AT THE CONFERENCE DINNER

MR. WILLIAM M. IVINS, Toastmaster:

It is nothing less than surprising that we here to-night, on a hot summer evening, should have gathered together some four or five hundred men and women for the purpose of taking part in a discussion of our criminal law.

I wonder how often people stop to realize how large a part, how tremendous a part, how essential a part, of our actual government is

carried on in just such meetings as this and in just such meetings as we have been having at the university yesterday and to-day.

We have a written constitution; we have a legal theoretical form of government, but as a matter of fact if we were not primarily a self-governing people, this written form of government would be as useless to us as a text from Hindu scripture; for we are governed by public opinion and we make that opinion.

If public opinion be the opinion of that part of the public which *feels* and of no other part of the public, then I fear our republic is doomed; if on the other hand public opinion be the opinion of that part of the public which *thinks*, and does not merely make various incoherent noises which it calls thinking, then our republic has every chance for growth and development and permanency.

That we should sit together, men and women, seriously willing to listen to the discussion of great fundamental problems, some of which are highly technical in their nature, and all of which are extremely difficult from the point of view of administrative efficiency is in itself of no small significance. If we are willing to discuss these things together, to make among ourselves an opinion, to qualify ourselves as quasi-public officers, to make of ourselves a part of the great permanent general committee of the people, then we are doing something which I believe is really of far more importance than nine-tenths of the jangling and the wrangling and the tangling of the mob, or of the series of legislative committees that we call our Congress.

Probably the most noteworthy and the most interesting of all the things that grow out of a discussion such as we have been having is the recognition of the dependence of the solution of each one of our problems upon the solution of every other of our problems, and it is this interdependence which makes our work so peculiarly and so gravely difficult. One of the things that leads us aside is that we constantly regard the subject from but one point on the periphery without regard to the whole of its surface and generally without regard to the center.

For instance, we are to-day confronted by the necessity for recognizing the truth of what Dean Kirchwey said regarding the fact that when our federal government was first formed we were not free, we were not democratic, and we had no proper government whatever. Nevertheless, the old tradition and the worship of the constitution of 1787 as originally written confront us at all times, and have come to be not only the small coin but the large medium of exchange of the demagogue. As a matter of fact, the constitution of the United States existed as written for but one moment, and that was the moment between its adoption and its being put into practise.

The instant the constitution was put into effect, by virtue of the law which is the life of the law itself, there had of necessity to be applications, and that means interpretations and that means growth and change, and the result of it all is that our written constitution is no longer our real constitution. Our written constitution is overlaid and has been replaced by an unwritten constitution, and that unwritten constitution grows and changes with the growth and changes of society. Our courts and our legislatures are the medium of that growth. If this were not so our constitution would be an instrument of strangulation instead of a vital reflex of a tremendous national life.

We habitually overlook the fact that there is a natural constitution of society, which can be studied as any sociological or biological problem can be studied, and that this natural constitution has no natural relation whatever to any written constitution. I had occasion to remark yesterday to my professional friends at Columbia that for two thousand years or more we have been repeating the statement that man is a political animal, that is, a social animal. Aristotle said it, St. Thomas said it and Montesquieu said it—and why shouldn't we say it? And yet if there is any one thing that is true about man it is that he is not a social animal, but purely and distinctly a gregarious animal, and as a gregarious animal he organizes his society by virtue of the rules of a natural constitution.

Every man belongs to many societies, of which the state is only one. He is a member of his church, and his interest as a member of his church may not be identical with his theory of his interest as a member of the state. He is a member of his political party, and he, fortunate being, may know why he is member of one party as distinguished from another, but in any case his action as a member of society is governed more largely by his membership in his party than it is by his membership in the state as a citizen. He is a member of his profession; he is a member of his club; he is a member of his regiment; he is a member of his athletic association.

We had to wait hundreds of years for Professor Schmoller of Berlin to bring out clearly and distinctly this natural constitution of society. We habitually disregard it, and because there is a state which is governed by a constitution of its own, we come to believe that somehow or other this state, which is only one of our societies, may eliminate all the other societies or disregard them. The moment the state undertakes to do that, that moment the state fails in its function. It is destroyed.

Here is the essential difficulty of the whole scheme. Each man in each group is supposed to have the largest measure of freedom con-

sistent with the life of the group. Each group is supposed to have the largest measure of freedom consistent with the development of the larger group. But suppose there develops in society a group which is so powerful that it removes itself from the control of the state and threatens the state itself. Then you have the tremendous problem which we have now before us in respect to the control by government of our large trusts, and the tremendous problem as to how far a group as such is criminal, how far the individual is a criminal, and what acts may by mere declaration of congress be made criminal.

In the state to-day—and by the state I mean the nation, for I regard our states as having come to be only geographical divisions for local self-government—we have but one people, we have but one territory, we have but one language, and we shall ultimately have but one common law. This national state is being governed by men only two of whom are elected, namely, the President of the United States and the members of congress, while all the rest are appointed. The result is that we are getting a successful and efficient government. In our states and cities we have an entirely different form of government, in which we elect every one from the coroner and the justice of the peace to the mayor and the governor. This latter form of government is breaking down completely and failing utterly to cope with the smaller problems, while the federal government, because of its constitution, is able to deal successfully with the larger one.

Let us come back for one moment to the dangerous conflict between the courts and one of the groups which threatens the supremacy of the state as a whole—I mean the great trusts.

What we are now trying to do is to secure from the Supreme Court of the United States a clear-cut determination of the relation between the trusts and the state. Otherwise they may outgrow the power of a merely obstructive government and bring about the same negation of government to which Dean Kirchwey referred.

In conclusion let me point out one further fact, namely, that we are making criminals by legislation, that we have criminality by legislation, instead of criminality by all of the standards of history and ethics. Our legislatures are under the control of our politicians; our politicians, generally speaking, are under the control of certain particular social groups which in turn are under control, and these legislatures, which have no continuity of individual membership make, or think they make, law, as a hardware man makes nails. But they are mistaken. Society itself is threatened frequently at its most central point by certain crimes, which are distinguishable strictly as political crimes, and



which are crimes not only because they violate the mandates of honesty, but because they really and treasonably and seditiously threaten the state; but these most dangerous of all crimes are the last to be penalized by the legislatures, and when penalized are the most difficult and the last to be enforced.

Our problems are no small ones. I suggest some of them and it will be for others to propose solutions.

PROFESSOR GEORGE W. KIRCHWEY, Columbia University:

I plead guilty to the charge of the toastmaster of having been concerned in bringing you here to-night, and thus hope to avoid some of the extremest penalties of the criminal law.

It is true, as he said, that I, along with him, am merely a stop-gap, intended to occupy as much time as you will tolerate me in occupying until the hero of the occasion presents himself [referring to the President of the United States]. I suppose I was called to this task because of my vocation. No academic lecture fills the bill unless it is at least sixty minutes in length. As I stand here, with the habits of my professorial experience upon me, in this body of practical people, I am reminded irresistibly of that characterization of the professor in which the late James Anthony Froude indulged before he himself had become a professor. "The professor," said he, "is a man who lives and moves and has his being in that ambiguous realm which lies somewhere between the world of pure thought and the world of practical affairs." Perhaps, then, you will conceive of me as standing with one foot in the world of practical affairs, and with the other as cautiously treading the interstellar spaces where the lightnings of pure thought play. I realize the dangers of the attitude and the possibility of short-circuiting the universe, but I hope to avoid that final catastrophe at least until I have completed my remarks.

I have been much instructed by this series of conferences during the last two days. I am inclined to make a confession—to betray a secret of the academic prison-house. Even in this public gathering I admit that the professor is the person who principally does the learning at our institutions of learning. I have had some hope of developing myself and of seeing my faculty develop into lawyers, and yet we do not even pretend to convert our students into leaders of the bar through the experience of the class-room.

I have studied this ingenious device of the exchange professor, of whom we hear so much nowadays, and I have come to the conclusion that the person who profits primarily, if not wholly, is the exchange



professor. He comes to America, or he goes to Berlin or Paris, and he returns home with his eyes opened, his horizon widened. He has discovered that the sun does not rise and set in the little community in which he plays his part. He has become an apostle of a new culture, and has acquired a new utility by the time he gets home.

And so I am inclined to believe that those who have actively participated in this conference have the most reason to congratulate themselves upon it. At any rate, I will confess that the papers to which I have listened, and even my own modest participation in the performances, have together given me much food for fruitful reflection. That reflection has been so fruitful and, to me, who am a dispassionate judge, so convincing, that I almost wish it had fallen to my lot to be the last speaker in order that I might in more senses than one say the final word,—also that I might escape promptly after I had said it.

The reflections engendered in me have been of such a nature that if my distinguished friend the President of the United States were present, and he were animated by the passions that animate some of our public men, I might be accused of sedition, of treason.

It was Voltaire who made the perfectly obvious discovery that the Holy Roman Empire was neither holy, nor Roman, nor an empire. I wonder if there will not some day, far from now, arise a man who, with the same penetrating vision into the past, will announce the equally obvious discovery that the great government of a free democracy in America in the beginning of the twentieth century was neither free, nor a democracy, nor a government.

I will leave to others—to our toastmaster, to our distinguished guest Mr. Heney—the discussion of the questions whether we, the people, are in fact a democracy, and whether we are in fact free, and will confine myself to the remaining question, namely, whether what we call our government is in fact a government. Perhaps it is just as well that the President is not here yet—just as well for me.

The essential functions of government, what are usually conceded to be the primary functions, are three—the maintenance of domestic order through the repression of crime, the making of war and the provision of a medium of exchange through the monopoly of coinage.

Now, the progress of civilization, the development of the industrial state side by side with the political state on which we continue to keep our eyes fastened, has insidiously robbed the government of the third of these functions. The great business of exchange as carried on now is carried on without the aid of the government. It is true that the government still goes through the empty form of stamping a certain

impression on a certain minimum amount of gold or silver, and I believe still stamps upon that coin the legend, "In God we trust," and yet everybody knows that the great business of the world is conducted with but the slightest reference to that metallic medium of exchange. The commercial world has created its own medium of exchange, many-fold greater in volume and importance than that which is still perfunctorily supplied by the government.

The government still makes war, but we are about to deprive our official hierarchy of that high and exclusive privilege. The same conditions which have transferred the money-making power from the state to the commercial community have transferred the war-making power from the state to the commercial community. Our wars to-day are commercial wars, and it is the great financier, the man of commerce, who determines whether or not there shall be wars of the old-fashioned kind, whether he will or will not call upon the government to lend him its aid in prosecuting his commercial wars. Very soon he will be able to dispense with the assistance of the government entirely, and then this most ancient and venerated function of the state will also lapse into innocuous desuetude. Doubtless we shall continue to build battle-ships and to equip armies for a very long time, just as the English continue to crown kings for a very long time after they have become superfluous. But this should not blind us to the change which is coming over the face of the world.

There remains the third, central function of the government, that, namely, of maintaining domestic order through the repression of crime. Well, if anybody believes that the government is performing that function and performing it satisfactorily he should have attended the conferences of the last two days. Nothing has been made clearer than that the administration of criminal justice has proved to be a lamentable failure. There have been multitudinous illustrations given of that fact, though the one portentous fact which stamps itself upon the memory is the fact that crime is not diminishing in any civilized country, but that it is, even in our favored land, relatively to the population, actually increasing. Especially is this true of crimes of magnitude, crimes of violence, crimes at which all the repressive force of the state has for centuries been directed.

Government, then, has been superseded in the function of providing the medium of exchange. It is rapidly being superseded as the war-making power. It has failed in its efforts to repress crime. What then remains for it to do?

This is not the place to discuss the true end or the possibilities of

government in the modern state. A new school of political philosophers has arisen who would transfer to the government most of the functions which men have heretofore performed by voluntary, associated effort, and this school seems now to be in the ascendent. Frankly, I cannot say that I am convinced that our political organs, which have made such a poor showing in the performance of the inherited functions of the state, have any particular competence for dealing with the newer functions which they are gradually assuming. I see no reason to believe, for example, that the efforts of the government, whether at Albany or at Washington, to regulate the industries of the country, have been very reassuring on this point.

Perhaps I may be permitted to say parenthetically and reassuringly that the government need not assume all these novel duties merely for the sake of justifying its existence. It will be permitted to run on indefinitely even after it has ceased to perform any really useful function. We continue to bow down to our idols long after we have ceased to believe in them, just as we continue to believe in them long after they have ceased to work miracles.

What I would in all seriousness urge is that we wean ourselves from the habit of looking to governmental agencies for securing all the good ends of life; that we recognize the imperfections—the ineradicable imperfections—of the state as an organ of social amelioration and that we revert to the good old practise of our fathers of doing for ourselves, by individual and associated effort, what lies in our power to do—and that, I venture to say, is everything.

What is left, then, for the state to do in the direction of criminal-law reform? Have we in our discussion of the defects of the criminal law and procedure during this two days' conference been wasting our time? I should hate to believe that. I am inclined to think that the government may well heed our suggestions. But you will observe that most of these suggestions are for the removal of obstructions which the state has itself created or has permitted to grow up and embarrass its own administration of the criminal law. Let the state, then, cease to multiply causes of offense. Let it simplify and expedite the procedure of its courts; let it attempt no impossible tasks of repression of sinful practises, but let it clarify its vision as to what constitutes crime, and let it deal with offenders, not in a sentimental—I will not even say a humane—but in a rational, scientific spirit, having reference not so much to the offense committed as to the fitness of the offender for an ordered social life. After all, there is no immediate danger that the state will lose its function of administering criminal justice. If it will only dis-

continue the practise of manufacturing habitual criminals out of casual offenders and of converting our delinquent children into hardened criminals and enemies of society, it will have its hands full for some time to come.

But there is more for us to do. When the wise man who presides over this meeting and who has learned the secret of reading the thoughts and hearts of his fellowmen, spoke as he did of the extent to which the real government of human affairs was coming more and more to be exercised by society at large, I feared that he had stolen from me the whole line of thought with which I came laden to this audience. But I have not allowed that fear to deter me from pressing the lesson home to you.

Truly, it is not only liberty that we owe to the eternal vigilance of the citizens. It is all the priceless possessions of political and social life. The real achievements of society, the real forward movement of humanity, are the result of individual and associated social effort—not made, usually, under government auspices, but often, too often in the face of official obstruction, and perhaps succeeding best when left severely alone by the government.

There, I venture to say, is the great field of effort and the great ground for hope, for those who look forward to a radical cure in existing conditions. Those conditions are, it must be confessed, an almost inevitable result of the constitution of the modern politically organized state, acting as it must through officials chosen on every other ground but that of their expert knowledge. Thus organized, it is almost inevitable that the state should deal at arm's length with the problems of delinquency and correction, that it should deal with crime after crime has been committed and that it should therefore fail utterly in its age-long effort to protect society from outrage and rapine.

But to us is committed the power, as well as the high privilege, of dealing with the offense before the offense cometh;—woe unto us if we once permit the offense to come—and that end we may, by such associated effort as our gathering here to-night represents, hope in the course of time to accomplish. As I have said, it seems to me that but little can be hoped from the government in the way either of repression or of the avoidance of crime; but much can be hoped, everything can be hoped from such an agency of social betterment as has been launched here during these two days, in the way of suppression of the evil in our social life through the avoidance of that evil.

This may, indeed (and we may as well face the fact), in the long run involve the reconstruction of our present social and industrial

order. I am no prophet, and I cannot predict what form that reorganization will take on or when it will occur; but that the existing condition of affairs is as intolerable, as impossible, from the point of view of the ordinary citizen as of the humanitarian, from that of the criminal judge as of the social philosopher, is now everywhere conceded. The existing order has no longer a defender.

But, however it may come about, it is at its inception that the tide of crime must be stayed and not after it has acquired the momentum with which it incessantly sweeps up and threatens to overwhelm our civilization. And, as I have said, it is to us—not to the state, not to the government—to us as individuals and still more as fellow members of the great corporation of civilized society, that there has been committed the high and difficult, but yet entirely possible, task of controlling crime at its very source, by dealing with the individual, with childhood and with the home, there shaping the citizenship of the future. And it is thus that we shall in time to come rob the state of the last of its ancient functions, that of administering criminal justice.

That, ladies and gentlemen, is the whole of my message, and, to quote the words of a distinguished American patriot of an earlier day, 'If that be treason, make the most of it.'

MR. FRANCIS J. HENEY:

It has been said in effect this evening that the criminal laws are all right, and that only a vigorous prosecutor is needed. I used to think that myself; I was quite well persuaded that any vigorous, aggressive, honest district attorney anywhere could enforce the law. That was at a time, however, when I believed that men and women like yourselves in this country all desired to see the laws enforced. I have learned better. I have found out that we all believe that crime should be punished in the abstract—because crime is never committed in the abstract. The test comes when a friend or a fellow director on the board or in the bank, or a brother, or even a next-door neighbor, has committed a crime, and one is called upon to exercise some responsibility as an individual. I say the test then comes as to whether you really believe that the criminal laws ought to be enforced.

When I was prosecuting land-fraud cases in Portland, Oregon, the attorney for one of the great transcontinental roads delivered an address at a prayer meeting, and stated that it was wrong to come into Oregon and prosecute some of her best citizens, for merely acquiring land from the government, when as a matter of fact the government had a wrong policy in regard to its public lands. The sawmills and lumber com-



panies of Oregon, he said, could not operate if the people honestly obeyed the law against fraudulent acquisition of timber-land, and the greatest industry of Oregon would be destroyed. Consequently it was all right to commit that sort of crime, and all wrong to prosecute it. In San Francisco, however, where there were few men interested in the fraudulent acquisition of lands in Oregon, I found the prosecutions popular; but when I began prosecuting important men in San Francisco for breaking the law there, my prosecutions became unpopular. It is no different here. You applaud prosecutions in San Francisco, but I firmly believe that if I were to undertake the same work in New York and to prosecute the same class of men as in San Francisco, many of you would refuse to dine with me.

While I am in full sympathy with the idea that in order to cure crime we must remove causes rather than doctor symptoms, yet I shall address myself this evening to doctoring symptoms. For, as has already been said, the removal of the cause is a long, hard difficult task, and most of you will get tired and stop working at it, whereas the symptom cure, if effective, produces a rapid recovery of the patient, and you will not get tired too soon to apply the remedy.

Before we can think of remedies, however, we have to know something about causes. Shakespeare suggests that the first step in reforming the criminal law would be to hang all the lawyers. It would not be a very bad thing to do. It would have considerable effect. One of the crimes against society which most lawyers commit frequently is that of persuading people generally and juries particularly that the presumption of innocence should prevail, that you must always believe a man innocent until after the prosecution has succeeded in getting twelve men to say that he is guilty. It makes no difference how much money is being spent to bribe juries to decide the other way, how much is being spent through newspapers to confuse public opinion in regard to the crime, how much is being spent to convince the public that the district attorney is really the man on trial. In spite of all this one must continue to believe in the innocence of the man charged with crime by the grand jury.

I say that there is no such duty on your part. On the contrary, every appellate court in this union has time and again declared that for all purposes except as a rule of evidence at the trial, an indictment raises a strong presumption of guilt. And yet in San Francisco, a lady from the east who was visiting there, had to ask one of her friends as a matter of social ethics when she was to draw the line. She had noticed that it was not after the indictment. She did not know whether it ought



to come after conviction, or to wait until after the appellate court had confirmed the conviction. Presumption of innocence as a rule of evidence is to-day one of the most ridiculous and illogical rules any civilized nation ever attempted to keep up. I believe I can demonstrate that without appealing to Jeremy Bentham for help; he certainly demonstrated it. When a *prima facie* case has been made out against the defendant I believe that it raises a strong probability of his guilt; but nevertheless, the jury is not to presume anything from the fact that he remains silent, when represented by eminent counsel, of whose health burglars and murderers inquire before committing crime. That is another one of the things that we ought to get rid of. No country except the English-speaking ones acts on the idea that a defendant should not furnish evidence against himself.

In San Francisco we found many other features of the criminal law that demanded reform. Under the California procedure, a man, if he has been indicted without having been previously held by a magistrate to answer for the alleged offense, may have the grand jury summoned into court and examined as to whether one of them did not have a bias or prejudice. It was the defendant Abe Ruef who summoned the grand jury into court and examined them for a period of several weeks to discover whether or not one of them did not have a bias or a prejudice at the time he acted on the grand jury in returning the indictment. Had it been found that any one of the grand jurors out of the twenty-three had a bias, even though it were in favor of the defendant, that would have sufficed to set aside the indictment. If the bias existed, it was immaterial which way it was.

Again, jurors may be examined at too great length by attorneys for the state and for the defendant. We examined something like thirty-two hundred jurors, I believe, in one case in open court. We were three months in getting a jury, and then two months trying the case. Then there was a disagreement of the jury. By that time everybody was tired and the people decided to retire the district attorney from office, so that the defendants found themselves thereafter in the position of one of Colonel Roosevelt's Rough Riders, who telegraphed him one day while he was President: "They have arrested me for murder. I am in a pretty bad fix. Can you help me out?" While the colonel had the matter under advisement he got a second telegram; "Never mind. It is all right; we have elected our own district attorney." It is a simple remedy and an efficacious one.

Another difficulty in California arose, not from the fact that the judges did not have sufficient power to compel respect for their actions,

but from the fact that the people had no say in selecting the judges. Under a form of political machinery which delivered over to a gentleman by the name of Abe Ruef, and to another gentleman by the name of W. F. Herron, who was attorney for the Southern Pacific Railroad, the power of naming all the judges upon all the tickets, so that the voters could take their choice, we were put in a position where we found that the rights of the people were not safe. A graft mayor by the name of Schmitz had been convicted by a trial jury, before an honest and upright judge, and the conviction was reversed by a railroad-dominated court, upon the ground that the indictment failed to allege that Schmitz was mayor of San Francisco at the time the alleged extortion was committed, and that, notwithstanding the fact that the penal code of California at that time expressly stated and now states that no matter shall be alleged in an indictment of which courts may take judicial notice. The plea was put forward by Chief Justice Beatty extra-judicially—and by that I mean, was put forward in a newspaper article defending the decision—that the court could not take judicial notice of who was mayor of San Francisco.

I think I have demonstrated in a reply that the statutes expressly directed that the courts should take judicial notice of who occupied each and every state office, and that in another section of the code, all of which had to be read together, a definition was given of state officers which included mayors of cities.

I could go on all night telling you about our difficulties in different cases; but one great difficulty that this country will have to face, if we are to stamp out corruption in our large cities, is the private ownership of public utilities. The corruption which is undermining the very foundations of government in this country, the corruption which starts with bribery of your public servants, and which leads to your best citizens aiding that sort of crime at their firesides, and in their best clubs,—that corruption and that crime, I say as a result of my experience and my investigations in San Francisco, and an examination of what has been done in Pittsburgh, St. Louis and in other parts of this country,—that crime starts with the private ownership of public utilities.

I am not a socialist, and I care nothing about public ownership of public utilities, but if these men are right when they say that bribery always has existed and always must exist to protect public utilities, when they tell me that they must therefore aid that bribery, and protect the bribers even to the extent of raising their salaries and putting behind them all the influence of the corporation to prevent conviction, and conducting a campaign of vilification and abuse against the public

prosecutor in order to put him on trial before the people and confuse the issues,—I say, if there is no way in which that sort of thing can be stopped other than through municipal ownership of public utilities, then we shall have to take over the public utilities and learn to manage them ourselves.

That situation exists in every large city of the United States, and it accounts for the fact that the political boss in your large cities has one hand in the grasp of the public-utility-corporation owners, who in turn are backed by the banks, influencing in turn their depositors among business men. The boss has his other hand in the grasp of the men who are living upon the degradation and ruin of womanhood. So you find it in San Francisco, and so you will find it in New York. If you take a vote in the fashionable quarter you will find that it is for the same identical public officer that is voted for in the Tenderloin, nine times out of ten. You say, "No," and I point you to your records. Take your votes, and investigate them, and I am prepared to say now that you will undoubtedly find that year after year that has been the case right here in New York; not always, but very often.

In San Francisco that was the case just two years ago; and notwithstanding the fact that Abe Ruef is in jail, the prosecutions there have been an utter failure. They have been utterly wanting in deterrent effect. To-day we have a more corrupt administration in San Francisco than we ever had during the time of Abe Ruef and Schmitz, and yet the prison door has closed on Ruef only within the last three months. Why is it? Because the public-utility corporations during a period of three years spent at least three millions of dollars corrupting the public mind with reference to the prosecutions and trial; accusing Mr. Rudolph Spreckels, that public-spirited citizen who supplied the funds with which we conducted those prosecutions, putting him on trial and accusing him of having started them solely for the purpose of obtaining ownership of the Union Railroad. There is no way of combating those charges; no way of reaching that large public which reads the newspapers and absorbs their views. The result has been accomplished by the expenditure of large sums of money, by hiring practically every weekly newspaper, including the *Argonaut*, which has a good standing here in the east as a literary publication, by purchasing the papers—and when I say purchasing, I am prepared to prove it with legal evidence—purchasing them to help corrupt the public mind to the end that wealthy criminals may not be successfully prosecuted.

Mr. Patrick Calhoun stated to a friend of mine twelve years ago that Wall Street would have to learn that public opinion can be controlled

as easily as business in any line can be formed into a trust. That theory he put into practical operation in San Francisco. It took something like two and a half years of constant misrepresentation, but it finally succeeded. What is the result in criminal cases? You must get your jury from the people; the prosecution has no right to a change of venue. With public opinion in the condition existing there, with so many people biased and prejudiced, you cannot convict, and the great criminals go free. The underlying cause in San Francisco is clear enough.

NATHAN WILLIAM MACCHESNEY, of Chicago, President of the American Institute of Criminal Law and Criminology:

As president of the American Institute of Criminal Law and Criminology I owe it to you to express our appreciation of the endeavor which is being made in your city to organize a New York state society for the thorough, painstaking, scientific investigation of these questions.

Popular dissatisfaction with the administration of justice, both civil and criminal, in this country has grown apace in the last decade, and the protests against the present methods have been given voice chiefly by our distinguished President in his writings, and the campaign has been carried on under the auspices of the American Bar Association, through the writings of Mr. Everett P. Wheeler, of this city, and Professor Roscoe Pound of Harvard University. The demand for reform is nation-wide and insistent, and the chief points of such demand may be stated as follows:

First, a general desire for and insistence upon a simplified procedure.

Second, a widespread belief and insistence that the courts shall be responsive to the enlightened social conscience of the day.

Third, a demand that higher standards shall prevail at the bar, in order that persons with anti-social tendencies may find it impossible to secure men of standing and training to promote violations of the law and render impossible their punishment.

The difficulties in meeting the demand for reform are numerous.

First, the general demand always impinges upon what some particular class regards as its special rights, and at various times almost every portion of the community is in opposition to some law.

Second, even where there is general agreement as to the reform needed, conflict between different advocates of the reform often makes concrete legislation almost impossible. Many people interested in a reform would apparently rather see it fail altogether than be obliged to coöperate with one of the opposing factions; and thus reform meets opposition oftentimes, even at the hands of friends. This is notable

where distinct classes differ in their view of the problem. For instance, psychologists, penologists, criminologists and lawyers approach crime from such widely variant points of view that it is impossible to get them together under any system.

Third, difficulty is found in securing attention for such legislation, because criminal-law reform lacks political value to members of the legislature. They give attention to matters far less important, because such matters have political value.

Fourth, the presence of lawyers in the legislatures is an additional difficulty oftentimes, because some of them regard the present technicalities as a "trade asset."

Fifth, sentimentality affects all legislation of this character, because of the general theory that anyone accused of crime must necessarily be the "under dog." Yet we know, as a matter of fact, that in this day society comes pretty near occupying that position, rather than the man who is accused of crime.

That reforms must be brought about immediately we all know; for the man of the street to-day believes and would endorse the saying of Solon, uttered two thousand years ago, that "laws are like spider's webs, which catch the small flies but through which the great flies break." Whether that is true or not, so long as the public believes it, it has a disastrous effect upon the administration of law; it lowers the standing of the lawyer and the public respect for law.

England in 1873 in its Judicature Act abandoned all the theories and practises which form the historical background of our absurd systems and buttressed technicalities of to-day, and brought about a system which is at once simple, effective, expeditious and modern. New York in 1848 attempted a reform of its procedure which was very advanced for that time, and New York is still far ahead of my own state, Illinois, whose procedure to-day is the procedure of England at the time of George the First. What definite remedies, then, in view of the experience of England and progressive legislation in states like New York, Massachusetts, New Hampshire, Wisconsin, Kansas and Oklahoma, may we hope to secure in the near future to remedy the apparent abuses, and satisfy the public demand, both lay and professional, for some solution of the problem?

Briefly, the following may be safely recommended and earnestly demanded, though in effect they cover much of the ground that has already been better covered this evening:

First: No judgment should be set aside or reversed and no new trial granted on the ground of misdirection of the jury, of improper ad-



mission or rejection of evidence, or of error in any matter of pleading or procedure, unless it shall appear to the examining court that such error has affected the substantial rights of the parties. Such a provision was originally drafted by President Taft, has since been recommended by the American Bar Association, and has just been passed by the Congress of the United States. To that end constitutional changes may be necessary to allow a consideration of the facts by an appellate tribunal.

Second : The right of the prosecution to comment upon the defendant's refusal to testify should be secured.

Third : The right to use private confessions obtained by officers of the law (commonly called "the third degree") should be abolished. The same right of change of venue should be given to the state as to the accused, and removals under proper restrictions from one county to another should be allowed. This doing away with the private confession and granting to the prosecution the right to comment upon a defendant's refusal to testify, will have important results. In all probability the defendant will testify more often than he does now, and we shall not be under the constant danger of having the sympathies of juries appealed to on account of the use of "third degree" confessions, as they are called. As a matter of fact such confessions are often obtained under conditions which ought to discredit them.

Fourth : The provision requiring a unanimous verdict should be done away with, and in all except capital cases, a three-quarters verdict should be allowed.

Fifth : The amendment of indictments should be allowed at any time provided the character of the charge be not changed, and provided the accused be given the right to prepare any additional defense made necessary by such change. No substantial rights of the defendant would in any way be sacrificed by such a provision, and those disreputable and disgraceful cases would be done away with in which convictions have been set aside on the ground of some trifling technical error in the indictment. You are all probably familiar with the line of cases referred to, notably the Missouri case of a crime against a woman, a case reversed by the supreme court because of the omission of the word "the" in the phrase, "against the dignity and peace of the state." That sort of thing discredits the law, and as Solicitor General Lehmann has said, "places the definite article above the sanctity of woman in the state of Missouri."

Sixth : Instructions should be prepared by the court, with the assistance of counsel, who should thereafter be limited to objections raised at



such times. This idea of placing upon the trial judge, in the hurry and confusion of an important trial, the entire burden of the charge and of allowing counsel at their leisure to seek out the highways and byways of possible error, when such error could have been corrected at the time of the trial, is a mark of barbarism.

Seventh: The power of the trial judge should be rehabilitated, so that he can exercise his common-law powers with the right to summarize and comment upon the evidence, as in the federal courts, and cease to be what President Taft has designated so aptly as a "mere moderator in a religious assembly."

Eighth: The same number of challenges should be allowed to the state as to the accused, and both sides should be placed, so far as possible, upon the same footing, without undue hardship to the accused. Personally, however, I do not believe in what is so often advocated, namely, the right of appeal on the part of the state. The expense, notoriety and worry incident to a properly conducted single trial for a criminal offense, is all any person accused of crime should have to face, and if technicalities are eliminated, and the state has a fair opportunity to convict, it should be limited to the single trial without appeal. Under present conditions it would indeed seem as if the state should have the right of appeal, but it seems to me far better that these other improvements should be effected, and the state limited to trial without appeal, because oftentimes it takes practically all that a poor defendant has in order to have his case properly presented.

Ninth: Public defenders are sometimes advocated. I do not believe that such a change would accomplish what its friends think it would. Such defenders however, should by all means be provided if an appeal is to be allowed the state, in order to minimize the burden on the accused, who is often without means to face the power, prestige and resources of the state.

Tenth: Where the accused takes the stand in his own behalf, he should be subject to cross-examination, and should be taken to have waived his constitutional privilege against self-incrimination.

Eleventh: The principle of second jeopardy should not apply in case of mistrial or re-trial. It is absurd, under present conditions, to have a prisoner practically escape all prosecution because of a mistrial, and I do not believe that the doctrine of jeopardy was ever intended to govern such conditions. The sooner we do away with the idea that it does cover it, the better.

Twelfth: An indictment should be sufficient if it (a) specifies the crime, its time and location, (b) with sufficient particularity to prevent

a second prosecution. It would seem as if that were sufficient, and as a matter of fact, in England it is sufficient. They do not have that absurd verbiage and constant repetition which we have here. A study of conditions in England has recently been made under the auspices of the American Institute. The report shows that substantial justice has been done under their rule with reference to indictment.

Thirteenth : Press comments should be stringently limited to (a) actual report of the proceedings (b) without comment editorially or otherwise (c) and without comment from the state's or district attorney. Most of us have got tired of having the district attorney or the state's attorney say what he expects to prove, commenting on the evidence. Too often statements are given out for publication in connection with criminal prosecutions which cannot possibly have come from any other place than the state's or district attorney's office.

Fourteenth : Jurors should not be disqualified because of the reading of accounts or hearing of rumors regarding alleged crime, but only when they cannot give a fair verdict because of fixed opinion.

Fifteenth : Expert testimony should be rigidly regulated, and if experts are not furnished by the state, their qualifications should be passed upon by it, their fees limited, and contingent fees absolutely prohibited.

Sixteenth : The state should have the right, under proper restrictions, to compel accused persons to produce any paper or thing of importance in connection with the trial.

Seventeenth : Jury service should be compelled on the part of practically every citizen. To that end the time of such service should be so fixed as to give the least possible inconvenience to those called for such jury service.

Eighteenth : A transcript of the evidence of a witness on a former trial, whom it is impossible to produce, should be competent evidence in a second trial.

These are all well-considered reforms, many of which have already been tested in various jurisdictions, and their enactment in any one jurisdiction will go far to remove the present widespread criticism. It is well to remember in this connection that the courts and the law bear an unjust burden of criticism everywhere because of the massing of the various defects in each of the state jurisdictions and in the federal courts in such a way as to compare those defects with the results achieved in a single jurisdiction, such as England.

This is obviously unfair. Much has been accomplished, but much yet remains to be done. The outlook for improved conditions is exceedingly bright. The interest of our distinguished President has called

public attention in a pointed way to the needs and needed remedies, and has pushed forward the reform of our criminal law and procedure at least a decade.

President Cleveland referred to needed reforms in his annual messages, President Roosevelt vigorously condemned certain aspects of our judicial administration, but it has remained to President Taft both to call attention to the need of such reform and to formulate, at least in part, the remedy.

The formation and work of the American Institute of Criminal Law and Criminology and the publication of its journal marked the first effort in English-speaking countries to secure thorough scientific data upon which to act, and to secure the proper coöperation of all forces, lay, scientific and legal, interested in the solution of the problem. And, last of all, the holding of such conferences as this indicates a desire and intention upon the part of those having knowledge of the subject to grapple with its solution, and not leave it to haphazard methods by the uninformed; but rather to lead, guide and assist our various legislatures in their endeavor to find a solution.

They are entitled to our help, our interest and our encouragement, as citizens interested in reform, who have the time, ability and knowledge to do these things. And it is encouraging when a group of people will get together like this, and insist upon fulfilling a part of their duty, at least, in discussing these subjects, and giving formal approval to views which have received sanction elsewhere.



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PROCEEDINGS  
OF THE  
ACADEMY OF POLITICAL SCIENCE  
IN THE CITY OF NEW YORK

Volume I]

JULY, 1911

[Number 4

THE REFORM OF THE CRIMINAL LAW  
AND PROCEDURE

EDITED BY  
HENRY RAYMOND MUSSEY

PUBLISHED QUARTERLY BY  
THE ACADEMY OF POLITICAL SCIENCE  
COLUMBIA UNIVERSITY  
116TH STREET AND BROADWAY, NEW YORK

*Entered as second-class matter Nov. 21, 1910, at the post office at New York, N. Y.  
under the Act of Congress, July 16, 1894.*

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**Communications** in reference to the **Proceedings** should be addressed to the editor, **Henry Raymond Mussey**, Secretary of the Academy of Political Science, Columbia University. Subscriptions should be sent to the Secretary of the Academy of Political Science, Columbia University. Members of the Academy receive the **Proceedings** without further payment.



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The thirtieth **annual meeting**, to be held on November 11 and 12, will be the occasion of a **National Monetary Conference**. The publications of the National Monetary Commission will be reviewed as a basis for the consideration of the most important problems now pending in currency and banking. There will be three sessions of the conference at Columbia University, where papers presented by leading economists will be discussed by bankers, business men and statesmen. The members of the National Monetary Commission will be guests of honor. It is hoped that the discussions will be broadly representative of the views of all sections of the country and of all classes who have given attention to the problem. On the evening of November 11 there will be a dinner at the Hotel Astor, at which A. Barton Hepburn, president of the Academy, will preside, and Senator Aldrich and others will speak. On the afternoon of November 12 the president of the Academy will give a reception to members and visiting delegates.

**Communications** regarding the Academy should be addressed to **The Secretary of the Academy of Political Science**, Columbia University.

